CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 473

IN RE WILLIAM V. BRADLEY, PETITIONER

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 22, 1942.

CERTIORARI GRANTED OCTOBER 26, 1942.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No.

IN RE WILLIAM V. BRADLEY, PETITIONER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

INDEX.

	Original	Print
Proceedings in U. S. C. C. A., Third Circuit	a	1
Docket entries	a	1
Order to show cause	b	2
Affidavit of William V. Bradley	c	3
Motion for leave to intervene	d	4
Order granting motion for leave to intervene	e	4
Statement of evidence	1	4
Caption and appearances	1	4
Government's evidence:		
Louis Kapelski	2	5
Ludolf A. K. Josendale	32	22
Motion to dismiss rule	41	27
Respondent's evidence:		
William V. Bradley	47	30
Frederick A. Russell	61	38
Order and judgment	64	40
Application for bail and supersedeas	66	40
Testimony of Louis Kapelski (September 15, 1942)	83	48
Testimony of Louis Kapelski (September 16, 1942)	106	59
Order and judgment	125	69
Order amending judgment	127	70
Clerk's certificate (omitted in printing)	128	
Order allowing certiorari	129	71

[fol. a]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

October Term, 1941

No. 8140

In Re William V. Bradley

(Original—Criminal Contempt)

Docket Entries

Sept. 16, 1942. Rule to Show Cause why Wm. V. Bradley should not be adjudged in contempt, filed.

Sept. 21, 1942. Appearance of Thomas D. McBride, for respondent, filed.

Sept. 21, 1942. Affidavit of William V. Bradley, filed.

Sept. 21, 1942. Motion for Leave to Intervene, by Gerald A. Gleeson, U. S. Attorney, et al., filed.

Sept. 21, 1942. Order Granting Motion to Intervene, filed.

Sept. 21, 1942. Heard on Rule to Show Cause. Coram: Maris and Goodrich, JJ.

Sept. 21, 1942. Proof of Service of Rule to Show Cause on William V. Bradley, filed.

Sept. 21, 1942. Continued to Monday, Sept. 28, at 10.30 a. m.

Sept. 21, 1942. Subpoena issued to Ludolph A. K. Josendale to appear 9-28-42—Served 9-21-42.

Sept. 28, 1942. Heard on Rule to Show Cause, etc. Coram: Maris and Goodrich, JJ.

Sept. 28, 1942. Testimony of Witnesses for both sides.

Sept. 28, 1942. Order Adjudging William V. Bradley in Contempt, and Imposing Sentence, filed.

Sept. 28, 1942. Certified Copies of Order Adjudging Bradley in Contempt to U. S. Marshal.

Sept. 28, 1942. Copies of Order Adjudging Bradley in Contempt to District Attorney (Gleeson).

Sept. 30, 1942. Transcript of Testimony taken at hearing, filed.

Sept. 30, 1942. Proof of Service of Subpoena on Louis Kapelski, for Sept. 28, 1942, filed.

Oct. 1, 1942. Fine of $500.00 paid to Clerk in cash by Timothy J. McElroy, Esq., on behalf of Wm. V. Bradley.

Oct. 1, 1942. Order Amending Judgment, filed.

Oct. 1, 1942. Certified Copies of Order Amending Judgment to U. S. Marshal.

Oct. 1, 1942. Copies of Order Amending Judgment to U. S. Attorney.

[fol. b] In United States Circuit Court of Appeals for the Third Circuit, October Term, 1941.

No. 8140

In Re William V. Bradley

Before Maris and Goodrich, Circuit Judges

Order to Show Cause—Filed September 16, 1942

And now, September 16, 1942, it having appeared to this court from the testimony given in a certain proceeding in this court entitled National Labor Relations Board vs. Delaware-New Jersey Ferry Company, No. 7850, that on September 14, 1942, in the corridor of the United States Courthouse outside of and adjoining the courtroom of this court in Philadelphia, one William V. Bradley did by threats endeavor to influence, intimidate and impede a witness who was about to testify before this court in the said proceeding, to wit, one Louis Kapelski, and did succeed in his said attempt to the extent that the said Louis Kapelski, under the intimidation of the said William V. Bradley, did testify falsely in this court;

It Is Ordered that a rule be and the same hereby is entered against the said William V. Bradley directing him to show cause before this court on September 21, 1942, at 10:30 o'clock a. m., why he should not be adjudged guilty of contempt of court by reason of the foregoing.

By the Court.

Albert B. Maris, Circuit Judge.

[File endorsement omitted.]

[fol. c] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

[Title omitted]

AFFIDAVIT OF WILLIAM V. BRADLEY—Filed September 21, 1942

COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss.:

William V. Bradley, being duly sworn according to law, deposes and says that he did not on September 14, 1942, or at any other time, in the corridor of the United States Courthouse outside of and adjoining the courtroom of your Honorable Court in Philadelphia, or elsewhere, by threats or otherwise endeavor to influence, intimidate and impede Louis Kapelski who was to testify before your Honorable Court in the matter of National Labor Relations Board v. Delaware-New Jersey Ferry Company, No. 7850.

Deponent did speak with the said Louis Kapelski on September 14, 1942, in the corridor of the said United States Courthouse but the words of your deponent on that occasion could not be construed as threatening upon any reasonable interpretation and certainly your deponent had no such intent and in using them meant no disrespect to your Honorable Court.

Deponent believes and therefore says that the said Louis Kapelski did not testify falsely in your Honorable Court as the result of any statement made to him by your deponent.

William V. Bradley.

Sworn to and subscribed before me this 21st day of September, A. D. 1942. Wm. H. Voehl, Notary Public. My Com. Exp. 2/10/1943.

[File endorsement omitted.]

[fol. d] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

[Title omitted]

MOTION FOR LEAVE TO INTERVENE—Filed September 21, 1942

And Now comes the United States of America, by its attorneys, Gerald A. Gleeson, United States Attorney in and for the Eastern District of Pennsylvania, and Thomas J. Curtin, Assistant United States Attorney in and for said District, and moves the court for leave to intervene in the within proceedings and to be made the complainant in this action.

Gerald A. Gleeson, United States Attorney. Thomas J. Curtin, Assistant United States Attorney.

[File endorsement omitted.]

[fol. e] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

[Title omitted]

ORDER GRANTING MOTION FOR LEAVE TO INTERVENE—Filed September 21, 1942

And Now, to wit: this 21st day of September, 1942, the above motion is hereby granted.

By the Court,

Maris, J.

[File endorsement omitted.]

[fol. 1] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1941

No. 8140

In re WILLIAM V. BRADLEY

Statement of Evidence

Philadelphia, Pa., September 28, 1942.

Before Hon. Albert Branson Maris and Hon. Herbert F. Goodrich, Circuit Judges.

Present:

Thomas J. Curtin, Esq., Asst. U. S. Attorney, amicus curiae.

Thomas D. McBride, Esq.; and Timothy J. McElroy, Esq. (of the New York Bar), for William V. Bradley, Esq., Respondent.

[fol. 2] Judge Maris: In the matter of Bradley, are you ready, Mr. Curtin?

Mr. Curtin: I am ready.

Mr. Shippen Lewis: If the Court please, in this Bradley matter I represent the witness, Mr. Kapelski, and I have talked with him and told him that there is nothing to do except to tell his story. I would be glad if the Court would allow my appearance to be entered as a friend of the Court.

Judge Maris: The Court will permit such appearance to be entered.

Mr. Curtin: As a matter of practice, will he enter his appearance as private counsel for Kapelski, or as amicus curiae, Your Honor having allowed me to enter appearance as amicus curiae?

Judge Maris: I think he may appear as a friend of the Court.

Louis Kapelski, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Curtin:

Q. Your full name, Mr. Kapelski?

A. Louis Kapelski.

[fol. 3] Q. Your address?

A. 101 East Elbon Road, Parkside, Chester.

Q. And your occupation?

A. General Manager, Delaware River Ferry Company, Chester, Pa.

Q. You appeared, did you not, as a witness in the matter of National Labor Relations Board, Petitioner, vs. Delaware-New Jersey Ferry Company, Respondent?

A. Would you repeat that again, please?

Q. In the case of National Labor Relations Board vs Delaware-New Jersey Ferry Company, you appeared, did you not, as a witness?

A. That is right, sir.

Q. Was your company a party to this action—the company by whom you were employed?

A. The company by whom I was employed?

By Judge Maris:

Q. Was it a party to that case?

A. No.

By Mr. Curtin:

Q. No?

A. No.

Q. Pursuant to a subpoena, did you come to this court? Pursuant to the subpoena did you come to this court?

[fol. 4] A. Yes.

Q. Now on the way, in the corridor of this court, did you meet anybody—in particular, did you meet a Mr. Bradley?

A. Yes, sir.

Mr. McBride: Now, may it please the Court, I would like to know whether this witness was under subpoena previous to his meeting Mr. Bradley. As Mr. Curtin states the proposition, it might appear so, but since the witness did appear twice, I understand he was under subpoena this second time.

Judge Maris: He might develop that. I think Mr. Curtin had better develop when this was. This witness was here twice. Do you have the dates? He knows them. Won't you get right to it? Develop the exact date on that point.

By Mr. Curtin:

Q. Now, can you recall the first time that you appeared in court in this matter?

A. The first time I appeared in court under subpoena was the 15th. That was Tuesday.

Q. Now, did you appear before that when you were not under subpoena?

A. I was in the building but I didn't—wasn't in the [fol. 5] courtroom and called upon. That was on the 14th.

Q. Now, did you appear at that particular time at somebody's request?

A. That is right.

Q. When you appeared first, on the 14th, it was at somebody's request?

A. That is right.

Q. Then you received a subpoena for the following day, the 15th?

A. That is correct.

Q. But you did not testify on the 14th?

A. That is right.

Q. Now, are you acquainted with a William V. Bradley?

A. Yes, sir.

Q. Do you know Mr. Bradley's occupation?

A. Yes, sir.

Q. What is it?

A. He is president of the union, Local No. 333, I think it is, a longshoremen's union, New York City.

Q. Will you tell us whether or not your company has a contract with that union?

A. We have.

Q. When does it expire?

A. When does it expire?

[fol. 6] Q. That is correct.

A. April 30, 1943.

Q. Now when you appeared in court on the 14th, can you tell us whether or not you met Mr. Bradley?

A. I did, sir.

Mr. McBride: Objected to, sir. It incorporates a statement of fact which the witness has himself negatived. He did not appear in court on that date, sir.

Judge Maris: I think that is right.

Mr. Curtin: He said he appeared here pursuant to a request of somebody on the 14th.

Judge Maris: But he did not testify. He said on that day he did not enter the courtroom. I think that is correct according to my memory.

By Mr. Curtin:

Q. You did come in the building?

A. I did come in the building.

Judge Maris: He came in the building.

By Mr. Curtin:

Q. You did not come in the courtroom on that day?

A. That is right; I came as far as the doorway.

Q. When did you first see Mr. Bradley, either in the corridor or the courtroom?

[fol. 7] A. I saw Mr. Bradley in the corridor on my way to the courtroom from the Market Street entrance.

By Judge Maris:

Q. On what day, Mr. Kapelski?

A. That was on Monday morning.

Q. The day that you did not actually come into the courtroom?

A. That is correct.

By Mr. Curtin:

Q. Was anybody with you at that time?

A. Yes, sir.

Q. Who?

A. Mr. Josendale.

Q. Did you have a conversation with Mr. Bradley at that particular time?

A. Yes, sir.

Q. Now, will you tell his Honor just briefly what you said to Mr. Bradley and what Mr. Bradley said to you? Tell us the conversation.

A. As Mr. Josendale and I were walking down the corridor towards this courtroom from the Market Street entrance over, I saw Mr. Bradley walking in the opposite direction. I hailed him, and I said, "Good morning, Mr. Bradley."

[fol. 8] He said, "Good morning. What are you doing here?"

I asked him the same question. I asked what he was doing here. I told him that I came up with Mr. Josendale on behalf—to testify against Herbert Garrison.

Q. Will you repeat the words again there? I didn't quite get that—the last sentence. What did you tell him, again?

A. I told him I came up here with Mr. Josendale to testify.

Q. To testify?

A. That is right.

Q. Go ahead.

A. Against Herbert Garrison, who they employed, as to the fact that he was no longer working for us, that we

discharged him. And he says, "That is the same case that I am up here on."

Q. Go ahead.

A. (After a pause.) Pardon the delay, but what I am trying to do is to be sure that I give the right words, which I had out there.

By Judge Maris:

[fol. 9] Q. We want you to do that.

A. I don't want to go ahead and make a mistake in any way, shape or form, but if I recall correctly, he says, "Well, if you are on their side," he says "you are going to get a"—I couldn't solemnly swear——

By Mr. Curtin:

Q. I don't want you to interpret the words: give us the exact words; we will do any interpreting.

A. I mean the point I am getting at is this: I could not safely recall whether he said "a damn good fucking" or "a good fucking".

Q. What happened after that, if anything?

A. If I recall, I asked him to wait a minute, and he didn't pay any attention to my words, or whether he replied, I could not honestly swear to it, but he walked on down the corridor, more or less in a hurry, and we came this way—Mr. Josendale and myself.

Q. I want you to place this conversation as closely as you can——

Judge Maris: Just a minute, Mr. Bradley, you are not to leave the courtroom. Come on back here.

Mr. McBride: Shall he sit up here?

Judge Maris: You had better have him up there with you.

[fol. 10] By Mr. Curtin:

Q. I want you to tell us where this conversation took place with respect to this particular courtroom.

A. Where it took place?

Q. What corridor?

A. In this corridor (indicating).

Q. The witness is pointing to the west corridor.

A. That would be the west corridor, or Tenth Street corridor.

Q. Tenth Street; that is correct. What direction from the Circuit Court of Appeals?

A. Toward the Market Street side.

Q. Toward the Market Street side?

A. That is correct.

Q. Approximately how many feet in distance?

A. Well, I would say it was probably one-third of the way in from the Market Street side.

Q. After this conversation was completed what did you and Mr. Josendale do then?

A. We walked down to this end—to this entrance of the courtroom.

Q. To this entrance of the courtroom?

A. That is right.

Q. I believe you did not testify that particular day? [fol. 11] A. I did not, sir.

Q. But subsequently you appeared here under subpoena and testified?

A. Yes, sir.

Q. You testified here before the Circuit Court of Appeals in that matter?

A. That is right.

Q. And if I recall properly, I believe you were subpoenaed again, and you appeared in court on the 16th, did you not, and testified?

A. That is correct.

Q. In other words, there were all together three appearances here in this building?

A. That is right.

Q. On the first, you did not testify; that is, on the 14th?

A. That is right.

Q. And on the 15th, or Tuesday, you did testify?

A. That is right.

Q. On the 16th you appeared back and you again did testify?

A. That is right.

Mr. Curtin: I now desire to offer in evidence testimony of the witness Kapelski on the two particular dates, namely on September 15th and September 16th.

[fol. 12] Mr. McBride: That is objected to, sir. Of course, I specifically waive any objection that I might have as to

the authentication of these notes of testimony and the record, but I do object, sir, on the ground that on the present state of the record at least, any testimony given by Mr. Kapelski on either of these dates is res inter alios acta as to this defendant because there is nothing shown on this record that would justify the Court in concluding that any testimony given by him was in any way affected by anything that was said to him.

Judge Maris: You mean before the introduction of these notes there is nothing.

Mr. McBride: No, sir, I say——

Judge Maris: If the notes are introduced, they will not afford any evidence of that—is that your contention?

Mr. McBride: Yes, sir; I say first that the record now, preliminarily, to justify the introduction, is not in such shape that it can be said to be admissible, in view of the complete failure of the record at this time to disclose that anything that was said was the result of or proximately [fol. 13] caused by or connected with in any way, whatever Bradley said to this witness.

Judge Maris: The Court overrules the objection and admits the notes of testimony solely for the purpose of proving that this testimony was given by the witness—not in any way to prove the truth or falsity of the matter testified to.

Mr. McBride: Your Honor grants me an exception?

Judge Maris: It being understood that the authenticity of the stenographer's transcription——

Mr. McBride: Is waived.

Mr. Curtin: That is waived.

Mr. McBride: I ask an exception, sir.

Judge Maris: You may have an exception.

Mr. Curtin: I would ask the Court to see that the entire transcript is in, but limit my offer to Kapelski on the two occasions.

Mr. McBride: I object to the entire transcript going in.

Judge Maris: You will have to cull from that the particular pages.

Mr. Curtin: We will do that together.

Judge Maris: Very well. Anything further from this [fol. 14] witness, Mr. Curtin?

Mr. Curtin: I was just debating with my conf-rere for one moment—will Your Honors excuse me just a moment, please?

Judge Maris: Certainly.

Mr. Curtin: You may cross-examine.

(A transcript of the testimony of Louis Kapelski in the matter of National Labor Relations Board, Petitioner, vs. Delaware-New Jersey Ferry Company, Respondent, No. 7850, United States Circuit Court of Appeals for the Third Circuit, will be found at the end of this day's testimony.)

Cross-examination.

By Mr. McBride:

Q. Mr. Kapelski, what time was it that you entered this building?

A. If I can recall correctly it was close to 10:00 A. M.

By Judge Maris:

Q. You mean on the first day?

A. On the first day.

By Mr. McBride:

Q. On the first day—that is the 14th?

A. That is correct.

Q. And you entered by the Market Street entrance?

[fol. 15] A. That is right.

Q. This courtroom, for the purpose of the record, being almost at the Chestnut Street entrance. Now, Mr. Kapelski, at the time you hailed Mr. Bradley, how far away from the entrance to this courtroom were you in yards, if you can estimate it?

A. That is fairly a hard question to answer, because after all you don't know the approximate yards in the length of the corridor.

Q. Well, it would be anywhere from 75 to a hundred yards away, wouldn't it?

A. Yes, I would say it would be all of a hundred yards away.

Q. You were with Mr. Josendale who is an official of one of the companies that was involved in that suit?

A. I was with Mr. Josendale.

Q. And you made known to Mr. Bradley that Mr. Josendale was an official of one of the companies—of the company for whom you were going to testify—didn't you?

A. Repeat that question.

Q. Let me rephrase it. You were the first one to greet Bradley?

A. That is right.

Q. He did not stop you?

A. That is right.

[fol. 16] Q. The conversation took place because of your stopping him and asking him what he was doing?

Mr. Curtin: Just a moment. I object to that because it does not necessarily follow that the conversation took place because my client said he'', sir.

Mr. McBride: Maybe it doesn't, but I am asking this witness.

Judge Maris: You may ask him. It is cross-examination.

By Mr. McBride:

Q. That is right, isn't it, Mr. Kapelski? The conversation took place because you stopped Mr. Bradley?

A. That is right.

Q. He did not stop you?

A. No, he didn't stop me; I don't think the man saw me.

Q. That is, had you not stopped him, you are confident that the conversation would not have taken place? That is right, isn't it?

A. Well, I--I couldn't swear to that because——

Q. All right, now when you spoke to him, you told him Mr. Josendale was with the company for whom you were going to testify, didn't you?

A. That is right.

[fol. 17] Q. And it was after you told him that, that you had the conversation in which he used the words you described?

A. Yes.

Q. Now, the conversation took place in a normal tone of voice, didn't it?

A. (After a pause): Well, there are several normal tones of voice. Now, if you mean by——

Q. Let me ask you this: did it take place in any louder tone than you are using now, or I am using now?

A. Well, I would say somewhat.

Q. A little louder?

A. Probably, yes.

Q. So therefore anything which Mr. Bradley said was easily heard by Mr. Josendale who Bradley knew at that time was connected with the company for whom you were going to testify; isn't that so?

A. Yes, it would have been very easily heard by Mr. Josendale.

Q. Now, you said that you were there at the request of somebody, and not under subpoena at that time?

A. That is right.

Q. That is right?

A. That is right.

Q. Who requested you to come?

[fol. 18] A. Mr. Josendale.

Q. And what arrangements did you make with Mr. Josendale, if any, respecting the time at which you were expected to get back to your employment?

A. He asked me if I would would come up and testify. I told him that I would, providing he could get me back to the office by 11:00 o'clock. He said, "Certainly," he saw—he felt—there was no reason why it could not be done.

Q. What time did you leave the courthouse on that day?

A. I left the corridor at approximately 11:30 A. M.

Q. And you had not been called up to that time?

A. No, sir.

Q. And you had no knowledge as to when or if you would be called?

A. No, sir.

Q. Now, after you told Bradley your purpose in being in the courthouse, he made this statement which you narrated—that is correct—about you were going to get——

A. He made that statement; that is right.

Q. Now, what did you understand he meant by that?

Mr. Curtin: Just a moment. I object to that.

Mr. McBride: The effect of ambiguous words upon a [fol. 19] man where it was charged he was threatening him—the very purpose of this proceeding is what this man knew him to mean by it.

Judge Maris: Overruled. Repeat the question.

(The question was read by the reporter as follows:

"Now, what did you understand he meant by that?"

The Witness: I understood that probably I was on a—coming up here at the request of Mr. Josendale to appear

on the losing side—but the side that he was on was going to give that company a damn good trimming.

By Mr. McBride:

Q. You mean in the case itself—that is the result of the case that was going to be heard—is that right, Mr. Kapelski?

A. Well, I—may I answer this——

Q. I would like you to make your answer as fully as you like.

A. I would like to answer that in this fashion: to begin with, when I came up here I did not fully understand the full case.

[fol. 20] By Judge Maris:

Q. What the case was about?

A. I did not know what the case was all about.

Judge Maris: All right.

By Mr. McBride:

Q. Now, Mr. Kapelski, you did not consider what Bradley said to be a personal threat directed against you, did you?

A. (After a pause) You mean that he meant as a threat of bodily harm to me?

Q. Bodily harm to you?

A. No.

Q. As a matter of fact you did not consider that he was threatening you personally in any way, did you?

A. I thought I just answered that question.

Q. Well, please answer it in more detail. We have our reasons for asking these questions, if you will just put up with it.

A. If you in your question—if you mean that he inferred in there that he was threatening bodily harm to me, I would say no.

Q. The sole purport of his statement, you took to be to the effect that you were on the wrong side of the case, and that [fol. 21] side was going to lose; isn't that right; Mr. Kapelski?

A. I think that is correct. I think that is the statement I made a few moments ago.

Q. The conversation itself took only a few seconds, didn't it?

A. That is correct.

Q. There was no attempt made by Mr. Bradley to draw you aside out of the hearing of Mr. Josendale, was there?

A. No, sir.

Q. And you did not leave the court—the building—as the result of what Mr. Bradley said to you, did you?

A. No, sir.

Q. Did you in any way alter, change, or modify any testimony as the result of anything that Bradley said to you?

A. (The witness did not answer.)

Q. Did you understand the question, Mr. Kapelski?

A. No.

Q. Now, the "no" is to what—to my question?

A. To your question.

Q. Then I understand you to mean that you did not modify or change your testimony as the result of what Mr. Bradley told you. That is right, isn't it?

A. May I answer that in—the thing is probably on the [fol. 22] very first day, probably, I did not understand some of the questions that were asked me, and I probably was not as frank with them as I should have been. I didn't explain them all as clearly as I should have.

By Judge Maris:

Q. On the first day, Mr. Kapelski, you did not indicate in any way that you were dissatisfied with the services of Herbert Garrison, did you?

A. On the first day?

Q. Your first day's testimony.

A. That is correct. If I recall——

Q. In other words, you withheld that information from the Court, did you not?

A. I withheld that, Your Honor, and I think the following day you asked me all those questions.

Q. And you frankly stated the whole situation?

A. I did, sir.

Q. Undoubtedly so. Now, isn't it a fact that your reticence on the first day was due at least in part to your conversation with Mr. Bradley?

A. It probably could have been in a sense, because I was—well, I don't know—I was more or less——

Q. You were——

A. I was confused.

[fol. 23] Q. You were, as you said, "in the middle."

A. That is right.

Q. You had nothing to do with this case; you were not a party to it; you were just a witness, and you found yourself in a situation which rather puzzled you, didn't it?

A. That is right; I was more than puzzled.

By Mr. McBride:

Q. But you did not lie or attempt to lie as a result of anything Bradley said to you, did you?

A. I did not attempt to lie on anything.

Q. That is right. The first day you simply said you did not fully understand what was asked of you; on the second day in answer to the Court's questions, you did. That is it, isn't it, Mr. Kapelski?

A. That is right.

By Judge Maris:

Q. Of course when you had this talk in the corridor, you had in the back of your mind that you had a contract with Mr. Bradley's union which would be coming up for renewal some time within the next six months or so. You had that in the back of your mind?

A. I probably did.

By Mr. McBride:

Q. Well, you did not understand, did you, Mr. Kapelski, [fol. 24] that what Mr. Bradley said was a threat against you in connection with your contract—did you?

A. (After a pause) At the time when all this was taking place, most anything could have gone through anybody's mind.

Q. I did not ask you that, Mr. Kapelski. You have testified before that you did not consider it to be a threat against you in any way in connection with your contract, did you?

A. I testified that it was not a threat against me, in bodily harm.

Q. And didn't you also testify that you did not consider it to be said against you in a threatening way regarding any contract that your company had with the union?

A. I never recall a question of that nature.

Q. It is a fact, isn't it, that at that time you didn't consider that Bradley was threatening you with respect to some contract that was coming up for possible renewal some time in 1943; isn't that right?

Judge Goodrich: Let us be sure he has the question. Will you read the question?

(The question was read by the reporter as follows:

[fol. 25] "It is a fact, isn't it, that at that time you didn't consider that Bradley was threatening you with respect to some contract that was coming up for possible renewal some time in 1943; isn't that right?"

Mr. McBride: And before you answer, Mr. Kapelski, I also read from the testimony, at page 17, in connection with the previous question——

Mr. Curtin: If Your Honor please, I do not understand. Is there any question pending?

Mr. McBride: There is a question pending, and I asked to read to him what he had said before on that same thing.

Mr. Curtin: I think, if Your Honor please, the proper method would be to have the witness asked the question; then if he doesn't know, give him the notes of testimony to refresh his recollection. I don't think he should ask the question and give him the statement at the same time.

Mr. McBride: You Honor, I ask leave to withdraw that question.

Judge Maris: You may withdraw that.

By Mr. McBride:

[fol. 26] Q. I ask you this question——

Judge Maris: On which day?

Mr. McBride: This is the testimony of Mr. Kapelski on page 17.

Mr. Curtin: Page 17 is on the 15th.

Judge Maris: That is on the first day?

Mr. Curtin: The first day of his testimony.

By Mr. McBride:

Q. Halfway down the page. Did you testify this way:

"He says, 'Well, I am here for the same thing.' He says, 'That is the case I have been fighting.' He says,

'Nevertheless, if you are on their'—he says, 'you are going to get'—in other words, 'you are on the wrong side of the fence, or you are going to get a trimming from the side of the fence you are on.' That is the way the thing implied to me. There was no threat as far as our contract with the union was concerned, but the threat, 'If you stay with that side, you are on the wrong side of the fence.' That is the way I took it."

Now, after reading that to you, Mr. Kapelski, I ask you whether it is a fact that at the time Bradley made this [fol. 27] statement you didn't consider that he was threatening you respecting any contract with the union?

A. (After a pause) No.

Q. Do I understand you to mean that therefore you didn't understand that he did not threaten you with respect to the contract—is that what you understood?

Judge Goodrich: Mr. McBride, I am afraid that is a little complicated. I did not follow the question myself.

Judge Maris: You asked him something which calls for a yes or no, and his answer is "No." That is clear, isn't it?

Mr. McBride: It is clear his answer is "No," sir, but it is not clear to me what he meant by it.

By Judge Maris:

Q. Mr. Kapelski, isn't it really the situation? Is this fair to say—you have told us what words you heard from Mr. Bradley.

A. That is right.

Q. And what he meant by it. Of course, what passed in his mind, you cannot say.

A. I cannot state what was in his mind; that is right. [fol. 28] Q. But at the time you knew that you and he had relations of your own through your company?

A. That is right.

Q. Which might be subject to some action in the future in case either he or you wanted to take it—you knew that at that time?

A. Well, we all hold that feeling, yes.

Q. And you had no interest whatever in this suit that was here pending, and you had no personal interest in the Delaware-New Jersey Ferry Company, did you?

A. No, sir.

Q. It made no difference to you, really, whether they won or lost?

A. No, sir.

Q. I mean you were just an innocent bystander, so to speak, as far as this suit was concerned?

A. That is right, sir.

Q The only thing that really concerns you from day to day is the management and operation of your own company and its future, and anything that may bear on what may happen to your company is a matter of real concern to you, isn't it?

A. That is right.

By Mr. McBride:

[fol. 29] Q. So far as you know, Mr. Bradley had no interest in this suit either; that is right, isn't it, Mr. Kapelski?

A. Not until I met him in the corridor.

Q. And what interest did you find out he had in the suit when you met him in the corridor?

A. Repeat that.

Q. I thought you did not understand it. It is that so far as you know Bradley was not interested in this suit —was not a party to it—so far as you know had no interest in it. That is right?

A. That is right.

Q. Now, when you said before to Judge Maris and to Judge Goodrich that there was no threat as far as the contract with the union was concerned, you were telling the truth then, weren't you?

A. Yes, sir, I was telling the truth.

Q. And that is the fact, and you would so testify now, wouldn't you?

A. I should; yes, sir.

Mr. McBride: That is all.

Redirect examination.

By Mr. Curtin:

Q. Just one or two questions there. Now, you stated, I [fol. 30] believe, in answer to Mr. McBride, that you introduced Mr. Josendale to Mr. Bradley; that is not correct, is it?

A. I didn't state that I introduced him.

Mr. McBride: No.

By Mr. Curtin:

Q. Wasn't there something you were supposed to have said to him about his being connected with the ferry company?

A. I said, "I am up here with Mr. Josendale here in regard to this Herbert Garrison."

Q. That is correct. In other words, he knew Mr. Josendale, probably—you did not introduce him, did you?

A. No, he probably knew him; I would not know.

Q. But you did tell him, did you not, that you were here to testify?

A. That is right.

Q. Now, when you said that you had—that your company had—a contract with the union, that was, I believe, correct, was it not?

A. That is right.

Q. Now, a contract of a company like yours with the union carries with it a lot of different questions of operation and management, does it not?

A. It carries——

Mr. McBride: I object to this leading of the witness, [fol. 31] sir.

Judge Maris: Objection sustained.

By Mr. Curtin:

Q. We will put it this way—what does your contract with the union carry?

Mr. McBride: Objected to as being immaterial, sir.

Mr. Curtin: If Your Honor pleases, I would like you to let me explain because one word has been harped upon—the contract. Now it may mean a lot more in this man's mind—management—different phases——

Judge Maris: I think he has already indicated that.

By Judge Maris:

Q. The fact is that it amounts to a day to day partnership in management, doesn't it?

A. That is right.

Q. If you need a man you have to get him from the union?
A. That is right.
Q. You have to deal back and forth with the union from day to day under your contract, or from time to time?
A. From time to time.
Q. Your relations with the union, therefore, and the [fol. 32] character of them and your relations with the president of the union, are of real importance in your operation, aren't they?
A. That is correct. That is right.
Q. Is that right?
A. That is right.

Mr. Curtin: That is all.

Ludolf A. K. Josendale, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Curtin:

Q. Mr. Josendale, where do you live?
A. Newcastle, Delaware.
Q. And you are employed by whom?
A. Delaware-New Jersey Ferry Company.
Q. The Delaware-New Jersey Ferry Company—they were the respondent, were they not, in the matter of National Labor Relations Board, Petitioner, vs. Delaware-New Jersey Ferry Company, No. 7850?
A. That is right, sir.
Q. Prior to September 14, you were in touch with the [fol. 33] previous witness, Mr. Kapelski, were you not?
A. I was.
Q. Can you tell us whether or not you requested him to appear here in behalf of your company to testify as a witness?
A. I did.
Q. Now, prior to coming up here to testify on September 14th, were you in touch with Mr. Kapelski?
A. I was.
Q. Where?
A. In his office in Chester, Pennsylvania.

Q. Was anybody with you?

A. Yes, our dockmaster, Mr. Sentman, was present.

Q. Mr. Sentman.

A. Sentman, yes.

Q. Did you have a conversation with Mr. Sentman relative to the testimony he would testify to as to this case?

Mr. McBride: Objected to as being improper, having occurred in the absence of the respondent, sir.

Judge Maris: Overruled.

Mr. McBride: An exception.

[fol. 34] The Witness: Why, the conversation was as to the ability of this man that I asked him to testify against, this fellow.

By Mr. Curtin:

Q. What was the name of the man about whose ability you asked him to testify?

A. Herbert Garrison.

Q. What did he say with respect to his ability?

A. Well, he told me he had hired him and he had fired him because he was no good. He didn't do his work, and as far as he was concerned, why, he would never have another job in his company. In fact, he told me he had been up there the previous week, or two weeks—I could not say exactly—and applied for a position, and he had told him he would not hire him under any circumstances.

Q. Now, then, the following Monday——

Mr. McBride: First of all, I move to strike that conversation from the record.

Judge Maris: Motion overruled.

Mr. McBride: Exception.

By Mr. Curtin:

Q. On the following Monday, did you stop in for Mr. [fol. 35] Kapelski and bring him up? That would be September 14th.

A. Monday morning, September 14th, I stopped at Mr. Kapelski's office at Chester, and I drove him up here in my car.

Q. Now, how did you enter this building?

A. We entered the building from the Market Street entrance.

Q. Market Street entrance—that is, you and Mr. Kapelski?

A. Yes, sir.

Q. You came up to the second floor, did you not?

A. Yes, sir.

Q. You proceeded down the second floor corridor?

A. Yes, sir.

Q. Tell us whether or not you met the defendant, Bradley, in the second floor corridor at or near the Circuit Court of Appeals room.

A. We did.

Q. Approximately how far up the building from the entrance?

Judge Maris: Which entrance?

By Mr. Curtin:

Q. From the entrance to the Circuit Court of Appeals [fol. 36] room—approximately.

A. I should say in the vicinity of about fifty yards away from the door, up the corridor—rather far up.

Q. Rather far up—approximately fifty yards?

A. Yes.

Q. Did you have a conversation, the two of you, with Mr. Bradley at that particular time?

A. No, sir; I had no conversation.

Q. Well, sir, did you hear a conversation between Mr. Bradley and anybody else?

A. I did.

Q. Who was the conversation between?

A. Captain Bradley and Mr. Kapelski.

Q. Now, will you relate to the Court what the conversation you overheard consisted of?

A. Why, Mr. Kapelski says, "Hello, there." And, in fact, they both said the same thing in one breath—"What are you doing up here?"

Captain Bradley shook hands with Mr. Kapelski and myself. Mr. Kapelski said, "I am up here with Josendale testifying against this Herbert Garrison."

Captain Bradley says, "That is what I am here for, on this Ferry Company case."

Mr. Kapelski says, "Well, I am testifying against Her-[fol. 37] bert Garrison." He says, "You know, I hired him, and you know I fired him; you know he is no good."

Captain Bradley said, "What do you mean? You are testifying against us."

Mr. Kapelski says, "Well, Mr. Josendale asked me up here and I can't do but tell the truth."

Captain Bradley says, "You are"—he says, "You are going to get a damned good fucking."

Mr. Kapelski says, "Now, wait a minute; wait a minute."

Captain Bradley raised his hand. He says, "The hell with you." He turned around and walked up the corridor.

Mr. Curtin: You may cross-examine.

Cross-examination.

By Mr. McBride:

Q. Mr. Josendale, you say that in that conversation Mr. Bradley said, "You are testifying against us"?

A. "Against us" or "against the other side." Now I cannot recall——

Q. Well, did you testify to that before, Mr. Josendale?

A. "Testifying against us"?

Q. All right, you say Bradley said, "You are testifying [fol. 38] against us." Now I ask you, when you were here before the Court and testified before, did you testify that way?

A. I cannot recall that, sir.

Q. Who have you talked to since you were here and testified the last time?

A. Who have I talked to since?

Q. Yes.

A. What do you mean by that?

Q. Have you talked with anybody respecting the testimony you were to give today?

A. No, sir.

Q. Nobody at all?

A. No, sir.

Q. You did not talk with the United States Attorney, did you?

A. Last Monday I was talking to him; yes, sir.

Q. And you told him what testimony you would give?

A. I presumed he knew what I gave.

Q. I asked you whether you told him what you were going to testify to.

A. No, sir, I did not tell him what I am going——

Q. You did not tell him?

A. No, sir.

Q. Did you tell anybody else what testimony you were [fol. 39] going to give?

A. No, sir.

Q. Did not discuss that with any other lawyer or official of the company?

A. Positively not.

Q. Can you tell us why you did not say that when you testified here before?

A. Didn't I testify to that?

Q. No.

Judge Maris: Say what, Mr. McBride.

Mr. McBride: That Bradley had said, "You are going to testify against us."

By Mr. McBride:

Q. Why didn't you say that when you were here before and testified?

A. May I address the Court, please?

Judge Maris: Yes, certainly.

The Witness: I am not quite sure—now, I want to be sure of this thing—whether Captain Bradley said, "Against us" or "Against the other side." Now, that is something I am not quite sure about. I would not swear to that.

By Mr. McBride:

Q. How long have you been working for the Delaware-[fol. 40] New Jersey Ferry Company?

A. Since 1925.

Q. And what is your position there?

A. Marine superintendent.

Q. And did you handle labor relations matters?

A. I did not. I only handle the engine room personnel—my department.

Q. Mr. Bradley in talking to Mr. Kapelski said what he had to say in your presence, and you heard it; that is right, isn't it?

A. That is right, sir.

Q. Made no attempt to draw him on the side?

A. No, sir.

Q. He shook hands with you and Mr. Kapelski?

A. That is right, sir.

Q. The conversation took only a couple seconds, didn't it?

A. I would say a minute or so.

Mr. McBride: That is all.

Mr. Curtin: That is all. The Government rests.

Government rests.

[fol. 41] MOTION TO DISMISS

Mr. McBride: Will the Court hear argument on a motion to dismiss this charge?

Judge Maris: If you wish to make it, sir.

Mr. McBride: May it please the Court, we move to dismiss the rule, or discharge the rule, on the ground that the Government has not met its burden of proving the guilt of the defendant beyond a reasonable doubt.

First of all, the statement that was made, whatever its purport, was not made in the presence of the Court.

Secondly, we contend, sir, that on the evidence here, it was not made so near to the presence of the Court as to justify the use of the summary jurisdiction of the Court to punish for contempt.

Third, we take the position that since what this Court has the right to punish is a contempt of its authority, at the time any conversation took place this Court's authority was not involved. This man was not subpoenaed as a witness at that time; he was under no duty to be present, to remain here, or to testify until actually called to the stand, and the statute governing the right of this Court to punish for contempt specifically says that this Court's right to [fol. 42] punish is as to the abuse of its authority. Now, irrespective of the question of whether or not what was said amounts to a threat or intimidation such as to justify a criminal charge before a jury, the point that I now make, sir, is that whatever was said is not in defiance to or a contempt of any authority of this Court, because the Court had not acted, nor had anyone called the Court's authority into operation.

Next, sir, the language used is clearly ambiguous, and involves, therefore, interpretation. It is not a question of the use of such language that admits of no other interpreta-

tion; it is not an attempt to bribe; and therefore the Court must look at all the surrounding circumstances, and under all those circumstances the Court can say and be satisfied to a moral certainty beyond a reasonable doubt that this man committed a wilful contempt of this Court. Now, the best way to judge, it seems to me, sir, is that the witness himself did not consider it to be a threat—the equivocal language as to what would happen if the witness testified on that side. The witness has himself said that to him it simply meant he was on the wrong side. I submit, [fol. 43] sir, that the Court does not have to extend its judicial notice very far to know that when one man from the waterfront talks to another, that is exactly what he does mean. I submit that is a matter of general knowledge that there is absolutely no threat contained in language like that. It simply means that you are going to lose, or your side is going to lose, and above everything else that is exactly what the witness thought it meant. And therefore, sir, I say that on this whole record—then coming to the question of whether or not it is near to the Court—in the Savin case, which is the outstanding authority in matters like this—there are two very real distinctions. The first thing is, Savin was under subpoena; he was a witness under subpoena, and the Court's authority was in operation there. Secondly, that Court did not decide that what was done was near to the presence of the Court: it simply decided that what was done there was actually in the presence of the Court because the first attempt to bribe a witness was made in the witness room, which the Supreme Court said was part of the court itself. The Court was present in its own witness room.

The second attempt that was made——

[fol. 44] Judge Maris: That is a little far-fetched, isn't it, Mr. McBride? Because "in the presence" means that the Judge sees it; therefore, he does not have to have evidence or testimony. He sees it himself, with his own eyes, but he did not see through a wall into the witness room.

Mr. McBride: It might be far-fetched, sir, but that is what Judge Harlan said in that case.

Judge Maris: It must mean by "witness room" an anteroom around the court.

Mr. McBride: I presume it does, sir, but I point out that the Savin case had nothing to do with that part of the

statute "so near to," and the Supreme Court said that the only thing that they were deciding was the question of whether or not since it took place in a witness room, and they cite authorities to that proposition, they said that the Court was present in its own witness room and in its own jury room; and they said specifically, "We do not decide whether or not that part of the statute referring to acts done so near to the Court under any condition—the idea of tumult or actual disturbance"—as the Supreme Court has said in the Robinson case. Mr. Justice Roberts specifically [fol. 45] restricted his decision to that.

In the Savin case, first of all, the attempt that was made, was made in the witness room; second, it was in a little hallway, part of the court room itself. It was not a public or general corridor as is here involved. There are two real distinctions: First, subpoena; second, the fact that it took place in a general corridor a hundred yards away or fifty yards away.

Judge Maris: What is the distinction between the little corridor and the public corridor? What distinction do you draw there?

Mr. McBride: I draw the distinction that the Supreme Court drew, sir, that that little corridor was part of the premises set apart for the use of the Court. I have the decision here. I cannot recall the particular language as to that part—they said that that little corridor there was part of the premises set apart for the use of the Court, and therefore the Court was present in that little corridor.

That is precisely what the Supreme Court said—the Court was present in that little corridor. And in no sense would this Court hold that you are present in a general corridor, so that *that* part of the statute does not apply.

[fol. 46] Now, when you come to the use of the language in the statute referring to "near to the presence of the Court," we have the Nye case, which made no distinction not covered already by the subpoena case. They did not say anything in addition to that, and on that fact, of course, the Nye case is distinguished clearly.

Judge Maris: Yes.

Mr. McBride: But in answer they say that it is more than a geographical matter; and when they came to the Robinson case, which says that the "near to" aspect of the statute should of necessity be accompanied by a tumult

or disturbance which actually interfered with the Court, and since that case is quoted with approval in the Nye case, and since the Toledo newspaper case is set aside, it simply rested upon the doctrine of proximate causation rather than geographical contiguity. I say on that ground, and apart from the others, I respectfully submit that this Court ought to halt this proceeding here.

Mr. Curtin: Do you desire argument?

Judge Maris: No, I don't think we need it. The motion is overruled and an exception to the respondent.

[fol. 47] Respondent's Evidence

William V. Bradley, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McBride:

Q. Mr. Bradley, where do you live?

A. I live at 174 Pelton Avenue, West Brighton, Staten Island.

Q. What is your occupation?

A. I am a resident and business manager of the United Marine Federation Local No. 333.

Q. How long have you been so engaged?

A. Since 1937.

Q. And were you a part in any way to this case of National Labor Relations Board against the Delaware-New Jersey Ferry Company?

A. Only as a witness.

Q. And did you appear here for the purpose of testifying?

A. I did.

Q. How did you come into the building?

A. When I came in on the far end, I believe it is the Mar-
[fol. 48] ket Street end——

Q. Did you see Mr. Kapelski?

A. Well, I didn't see him when I first came in. I was requested to be at the court at ten-thirty and I got here about ten minutes after ten, and I met Mr. Somers, of the National Labor Relations Board, just outside the court

room, and I needed a shave, and I asked him if I would have time to go down and get a shave.

Q. What time did you start after your shave?

A. Well, it was around ten minutes after ten, because he said, "Can you be back here in fifteen minutes?"

And I says I thought I could, and he had a little envelope that he was going to mail, and he said, "Will you drop this in the box for me?"

And I said, "Yes."

So he says, "Well, be back in fifteen minutes."

So I started out, and when I got on the forward end, I was just going around to get the elevator, and I heard someone call me, and it was Mr. Kapelski, and he says, "Good morning, Cap, what are you doing here?"

I said, "Good morning, Mr. Kapelski." And with that [fol. 49] I shook hands with him, and the gentleman with him was—which was Mr. Josendale—and I says, "I am here on the—witness for the National Labor Relations Board." I says, "What are you doing here?"

He says, "I am here against Herbert Garrison."

And I says, "You are?"—something along that lines—I says, "Are you appearing against the Garrisons?" I said, "Which one?" He says, "The Garrison that worked on the boats."

And I says, "Oh," I says, "yeah?"

And he says, "Yeah."

I says, "Well,"—I says, "you are going to get a fucking," and I walked away from him.

And he says, "Wait a minute."

I says, "I have to be back in fifteen minutes," I kept walking away, and I walked around and took the elevator out.

Q. Now, when you said that, what did you mean?

A. Well, I—I didn't mean in any way to threaten the man. It is just an expression that we have on the waterfront, and I just use it a lot, and I know it isn't right, but the type of men that we are on the waterfront, and the type of men that I deal with, why, it is just a common occurrence and something that just comes out of us with-[fol. 50] out thinking what——

Q. Did you intend to threaten him personally?

A. I did not. I had——

Q. Pardon me; go ahead.

A. I had nothing to gain whatsoever by threatening Mr. Kapelski or the contract. The contract is in effect, and when we make a contract we do everything we can to live up to it, and there is absolutely nothing——

By Judge Maris:

Q. Mr. Bradley, you know that Mr. Kapelski was not interested in this case here, don't you? How would the result in this case hurt him in any way?

A. I didn't think it could hurt him, Your Honor.

Q. What did you mean by making a statement to him which I understood you to mean he would get a good licking? How would he get a good licking out of this case, in other words?

A. When I says "you" I meant "the other side," Your Honor.

Q. I see.

A. I just—as I say, it is an expression that we have on boat, and being president and manager of the organization——

Q. Well, not making any special reference to him, what [fol. 51] I gathered is that what you meant was that somebody was going to get a damned good licking. Isn't that what you meant?

A. Yes.

Q. In this law suit?

A. Yes, Your Honor. I figured we had a good case in court.

Q. But you knew Mr. Kapelski was not interested.

A. No.

Q. Neither he nor his ferry company are in this law suit.

A. No, I knew that.

Q. And it would not hurt him any if the company lost everything it wanted to get.

A. Absolutely.

By Mr. McBride:

Q. Did you have any interest in the law suit?

A. No, none whatsoever.

Q. When you said "you," did you mean Mr. Kapelski personally?

A. I mean just as I said, we were going to beat them in the case. I did not mean him personally, or anybody personally; I just figured we had a good case in court.

By Judge Maris:

[fol. 52] Q. You say, Mr. Bradley, you have no interest—you were president of a union whose members had a very real interest, didn't they?

A. Yes, but the reason I say that——

Q. I mean they were in here—if they won they would have received large amounts of back pay as members of your union.

A. Yes, Your Honor, but they would have won by it.

Q. And among those would have been Herbert Garrison?

A. Yes, sir.

By Mr. McBride:

Q. Would he? Was he a member of your union at this time?

A. No, he is not.

Q. Tell that to the Court. What interest did you have in Herbert Garrison at this time?

A. I had no particular interest as far as myself or the organization, but I felt as though he had something coming, and the reason I say I had nothing to gain by threatening Mr. Kapelski was that I believed the Court had ruled in the case of the National Labor Relations Board that that set-up of the union as far as the licensed men and un-[fol. 53] licensed men was the wrong set-up, and we have Mr. Kapelski's company under that set-up, and we are getting in his company and also in the South Street—Jersey—company wages and conditions way above the Pennsville ferry. That is the reason I say I had nothing in threatening of him; it was just an off-handed remark that we boys in New York a lot of times—or anywheres on the water front——

Q. Let me ask this: Did you mean any disrespect whatever to this Court?

A. Absolutely not any.

Q. How many times have you ever been in court?

A. This is the second time in my life I have ever been in court.

Q. Have you ever been arrested or anything like that for any crime?

A. No, sir; no, sir; I have never been arrested, outside of an automobile violation.

Q. Were you attempting to dissuade Mr. Kapelski from testifying?

A. No, sir, I was not, because it didn't make any difference to me personally, or to the organization, how Mr. Kapelski—as a matter of fact, he would have put me or my organization in a better position if he did testify against Garrison.

[fol. 54] Q. Why?

A. Well, it is an argument—not only—it is an argument we have with all companies on a competitive basis: when we go in to make our contracts—the Pennsville and New Castle is somewhat of a competitor of the company, and, as I said before, we are getting wages way above those wages down there, and I had absolutely nothing——

Q. Let me ask you this: Do you mean if the decision had been against Garrison that would have helped the union out and facilitated its dealings with your employers?

A. I say as far as the Bridgeport-Chester run would be, yes, if Mr. Kapelski testified against Garrison, the way I look at it. It——

Q. Now, why is that? Will you explain that to the Court?

A. Well, as I said before, when we go into a contract, all companies—or all concessions by us in regard to wages are on what their competitor is paying, and if Mr. Kapelski was to testify against Garrison, then I would always be in a position to say to him at the negotiations, "Well, we tried to do something in Pennsville, and you hindered us; [fol. 55] you stopped us from doing that." I mean that is the argument we would have always had with them.

Q. You mean this is something you thought up in the preparation of this case: that was not in your mind at that time, was it?

A. No, but there was no threat in my mind either. I did not even know Mr. Kapelski was here, and I would not have known it if he had not stopped me.

Cross-examination.

By Mr. Curtin:

Q. Your union is 233, Mr. Bradley?

A. 333.

Q. 333—your union did not have a contract with the Delaware-New Jersey, did it?

A. No, sir, it did not.

Q. And you were negotiating for a contract, were you not?

A. At this time?

Q. No, at the time of this occurrence.

A. Negotiating with——

Q. Negotiating with the Delaware-New Jersey Company? Weren't you trying to sign them up for a contract with your union, Local 333?

A. No, sir; not at this time.

[fol. 56] Q. I am talking about the time that all this action took place, when the case was heard—labor case and everything—you were not trying to have a contract with them?

A. No, sir.

Judge Goodrich: I don't think the question is clear. Do you mean two weeks ago or several months ago? I don't quite get the point.

By Mr. Curtin:

Q. At any time prior to the hearing of this case when you met Mr. Kepelski, wasn't your union Number 333 trying to enter into a contract with the Delaware-New Jersey?

A. We haven't contacted on our contract since, I think it was, April 17, 1940.

Q. In other words, prior to this trial you had been trying to sign them up, naturally, hadn't you?

A. Not since the National Labor Relations Board had taken the companies over, no.

Q. Now, Garrison was not a member of the union, was he?

A. No, sir, he was not.

Q. Were these other men members?

A. At this time they wasn't, no.

Q. Was Garrison a member at the time you went on [fol. 57] strike, however?

A. He was, yes.

Q. In other words, he was a member at the time you went on strike, but he is not a member now?

A. That is right.

Q. These other employes involved—were they members of your union?

A. At the time they went on strike, yes.

Q. At the time of the strike, they were all members of the union?

A. At the time they went on strike, yes.

Q. So in the award of pay by the National Labor Relations Board in this court, your union would have vital interest?

A. No, it would not, not at this time.

Q. Wouldn't your union have an interest in its members and former members that went out on strike securing large amounts of money for back pay?

A. Yes, but the union and myself would not benefit as far as that particular company was concerned.

Q. Yes, but I mean you would notify all the people that worked along the river that your union was instrumental in securing these large amounts of money, wouldn't [fol. 58] you?

Mr. McBride: Objected to. It shows no union interest. It is purely speculative.

Mr. Curtin: He says his union had no interest whatsoever.

Judge Maris: Objection overruled.

By Mr. Curtin:

Q. Did these men owe you any back dues? Had they been dropped for nonpayment of dues, in other words?

A. Your Honor, we stopped collecting dues from these members pending the National Labor Relations Board ruling. Now, the National Labor Board ruling, as I understand it, and my advice was, that they took it to—I don't know just what court, but nevertheless the court ruled that the licensed personnel and the unlicensed personnel was the wrong set-up in that particular company.

Judge Maris: Yes, we are familiar with that.

The Witness: And we in the organization have all of the New York Harbor, Providence, and all along the coast organized under that set-up, and we talked it over, and the Executive Board had talked the ruling of the courts over, [fol. 59] and thought it best that we do what we could to get these men their back pay, and then we could not put them in the union under the set-up that we have now, due to the ruling of the court, and that is the only reason we wasn't interested in them, because for that reason——

By Mr. Curtin:

Q. Now, this expression that you used—we won't go into it—you know what it was: that has quite a few meanings, does it not?

A. Yes, but—I say, Your Honor, but when we use it, it is just as I said, an offhanded remark.

Q. In other words, it can mean that you are going to lose something, either of a financial nature, or of a physical nature: in other words, it has three or four different meanings, doesn't it?

A. Well, I believe it could be interpreted that way.

Q. That is right. That is what I am getting at.

Mr. McBride: Just a minute; let him finish.

Mr. Curtin: I am not stopping him. Go ahead.

The Witness: But after all it is more or less a remark that is passed by us men of the waterfront.

By Mr. Curtin:

Q. But even with men along the waterfront, it has been [fol. 60] construed to be a threat, has it not?

A. Not that I know of, no.

Q. In other words, your interpretation—go ahead.

A. It is the same—if you were going along the waterfront, and we will take, for instance, the World Series game now—now, if you walked aboard a tugboat at Pier 1 North River, and you say to some guy something about the Brooklyn Dodgers, he might say a thing like that about the Brooklyn Dodgers. I don't know why it is, but it is a remark that we just can't get away from.

Q. That is right; that is one shade—we will go to some of the other shades: It can mean also that you are going to get a good licking, can't it?

A. I never heard it that way.

Q. You never heard it used in that fashion?

A. No, sir, I did not.

Q. We will go to the thing between—the middle one: you never heard it used in the financial sense, meaning the loss of something financially by it—either you or the people connected with you?

A. Well, I never used it, or I don't know of anybody that would use it.

Q. In other words, the only meaning you have heard is the one you have said?

[fol. 61] A. That is the only time I use it, yes.

Judge Maris: Anything further?

Mr. McBride: No, that is all.

Judge Maris: All right.

FREDERICK A. RUSSELL, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McBride:

Q. Where do you live?

A. I live in New Canaan, Connecticut.

Q. Are you personally connected with the armed services?

A. No, I am not.

Q. Do you know the respondent, Mr. Bradley?

A. I do.

Q. How long have you known him?

A. Oh, five or six years.

Q. Have you done any business with him in connection with the tugboat work?

A. I have.

Q. Does your company have a contract with him?

A. Yes, it has. I happen to be chairman of the New York Harbor Arbitration Board which negotiates the agreements [fol. 62] with Captain Bradley's union.

Q. Now, you, therefore, know a large number of people who know Captain Bradley?

Mr. Curtin: Excuse me, please: Is this just a character witness? I am at loss. I would like to ask at side bar for an offer of proof. I am at loss as to the proper time to object. I don't want to object to each question.

Judge Maris: Perhaps he may develop the testimony, and if it becomes objectionable, in your view, you may raise objection.

By Mr. McBride:

Q. Mr. Russell, you say that you have negotiated with Mr. Bradley in the capacity you mentioned: do you know a large number of people who know him?

A. Yes, I do.

Q. Among those people what is his reputation as to being a good, decent, law-abiding citizen?

A. Yes, he is.

Q. What is his reputation as being a citizen who respects the institution—American institution such as courts?

Mr. Curtin: Now just a moment. That does not come in character witnesses.

[fol. 63] Mr. McBride: It is the very trait of character involved in this criminal prosecution, sir.

Mr. Curtin: I submit it does not come under character.

Judge Maris: Objection overruled. If he knows—if this has been discussed.

Mr. McBride: Does Your Honor say it must have been discussed?

Judge Maris: Well, how can he tell what his reputation is unless he has heard it bruited about to some extent?

Mr. McBride: Well, that may affect the weight of his testimony, but if he has seen this man, and seen others talking with him, and had dealings whereby they made contracts which they lived up to, and in general did not violate the law and so forth, even though it be that negative——

Judge Maris: That you have asked him, but you are going to a specific question as to whether he respects the court.

Mr. McBride: Yes, sir.

By Mr. McBride:

Q. First of all, do you know anything about Mr. Bradley's reputation as a citizen who has respect for the courts [fol. 64] of the country?

A. I consider him a very respectful, law-abiding citizen and a man that lives up to his verbal agreements as well as his written ones.

Mr. McBride: Cross-examine.

Mr. Curtin: I have no questions.

Mr. McBride: That is all, Mr. Russell.

Judge Maris: That is all.

Respondent Rests

Mr. Curtin: I have no rebuttal, sir.

Judge Maris: The court will take a recess for a few minutes.

(Recess from 11:53 until 12:43 P. M.)

Judge Maris: Gentlemen, the Court has considered this matter and has prepared an order which I shall read and hand to the clerk.

(Judge Maris then read the following:)

ORDER AND JUDGMENT

And Now, September 28, 1942 after full hearing and consideration of the testimony in open court upon the return of the rule to show cause heretofore entered herein the court [fol. 65] now finds that

On September 14, 1942 at about 10:15 o'clock A. M. and about fifteen minutes before the scheduled commencement of the hearing by this court of a certain proceeding pending in this court entitled National Labor Relations Board v. Delaware—New Jersey Ferry Company, No. 7850, in the corridor of the United States Courthouse outside of and adjoining the court room of this court in Philadelphia, the respondent above named, William V. Bradley, did utter words which were calculated to and intended to intimidate one Louis Kapelski, a prospective witness then and there voluntarily attending the opening of this court for the purpose of giving testimony in the above mentioned cause on behalf of the respondent therein.

The court further finds that the words so uttered by the respondent Bradley did intimidate the said Louis Kapelski to the effect that he gave before this court false, perjured and incomplete testimony upon the hearing of the said cause.

From the foregoing facts it is adjudged by the court that the respondent William V. Bradley did thereby commit a [fol. 66] contempt of this court for which contempt it is by the court now ordered and adjudged that the said William V. Bradley be imprisoned for the period of six months and pay a fine of $500.00 and stand committed until the sentence is complied with.

It is further ordered that the United States Marshal for the Eastern District of Pennsylvania shall forthwith execute this judgment.

APPLICATION FOR BAIL, ETC.

Mr. McBride: May it please the Court——

Judge Maris: Mr. McBride.

Mr. McBride: I would like an opportunity to take such

appeal, or writ of error, or such other legal proceedings as are warranted in the premises, and I would therefore ask the Court if it will fix bail so that I might have such opportunity. I think it is a very serious matter. It has implications other than those of this respondent, and is the kind of case that ought to be reviewed.

Judge Maris: Specifically, what is your application, Mr. McBride?

Mr. McBride: My application, sir, is to have continued the bail to act as a supersedeas so that the defendant need [fol. 67] not now commence the service of the sentence imposed, and that that supersedeas last until disposition of any further appeal from the sentence and judgment of the Court.

(The Judges confer.)

Judge Maris: I suppose any application that would be made, would be made to the Supreme Court.

Mr. McBride: I believe so, sir.

Judge Maris: Now, should not your application be addressed to the Supreme Court or a Justice thereof?

Mr. McBride: I think it should be first addressed to Your Honors, and because of the fact that we start here with the second highest court in the land, it perhaps, I think, would be better, certainly from our point of view, if it were granted by this Court. If we started in the District Court, we would have a Circuit Court to whom we could go.

Judge Goodrich: Don't you think our situation is comparable, so that our position in this is something like that of the District Court judge, and then an application is made to the Circuit Court of Appeals to admit to bail if the District Court judge denies the motion?

[fol. 68] Mr. Curtin: That is correct, sir.

Mr. McBride: I think it is comparable, with one exception, that in balancing the conveniences it is heavily weighed on the side of this respondent. After all, sir, this is a summary proceeding: it is a case in which the Court issued its own rule.

Judge Goodrich: That goes to a different point. Are we all agreed that the situation is comparable to that of application to a District Court judge for bail after conviction?

Mr. Curtin: That is correct.

Mr. McBride: I do not know, sir. I do not know that this court is in the same position as the District Court judge would be. I think this is, of course, sir, utterly within the Court's discretion as to whether it will grant it, and I know of no guide by which that discretion should be measured or ruled. I submit; sir, that the only guide should be—the question going directly from this court and going directly to the Supreme Court of the United States would take such a considerable amount of time that before ultimate decision the question may be moot.

Judge Maris: Well, you are in a fortunate position in [fol. 69] that the Supreme Court will meet next Monday. In other words, any application you make will be considered no doubt very promptly by that court.

Mr. McBride: Well, it may be, sir, but there is a big distinction between getting a Circuit Court to pass upon the probable cause, and the way in which a District Court is involved, as compared to the way in which you have to prepare you certiorari and have it printed in an appeal from the Circuit Court to the United States Supreme Court. I urge upon Your Honor that it is the understanding that competent dispatch would be used and that no supersedeas would be or should be used for the purpose of simply delaying the court's judgment, and we would make the application immediately, sir; but inasmuch as this is a summary proceeding, I submit that the questions are serious, and the consequences to the defendant are serious, and it raises a fundamental question of law.

Judge Maris: What is the question that you seek to raise?

Mr. McBride: I seek to raise first, sir, that this court is without power to impose the suminary judgment of sentence against this respondent for an act which was done a [fol. 70] hundred yards away from the court at a time when the court was not in session, and particularly where the act was done, and the language was used, to a man who was not yet a witness, who was not under a subpoena or authority of this court, and by the use of language which was at the very worst ambiguous.

And further, I raise the question that on the whole record this court could not find that this man did so intend to intimidate beyond a reasonable doubt, as is necessary even under this court's own decision in the Eskay case as well

as the Michaelson case in the Supreme Court of the United States. But if it is a criminal proceeding, he is being summarily adjudged in contempt, and being put in jail, and if he does not have a supersedeas, irreparable injury may be done.

(The Judges confer.)

Mr. McBride: May I add one further fact that I have not mentioned? He has never been arrested before, and he has a wife and four children; and on that ground I hope the Court will see fit to grant the motion.

Judge Maris: I should think, Mr. McBride, it would be [fol. 71] extremely doubtful whether we would have any basis for enlarging this defendant unless an application for some kind of review has been made. That certainly is true in the case of the District Court—you have got to take your appeal to the Circuit Court of Appeals before you can make application for bail in a supersedeas. I mean supersedeas simply won't be granted on conversation——

Mr. McBride: May I suggest this, sir, that Your Honor could grant the supersedeas, one of the conditions to be that within a specified time the application be made, and certainly that would be quite proper in view of the difficulties attendant upon actually making the application. It would not be mere conversation if Your Honor should grant the supersedeas conditioned first that we make the proper application within the time specified by the court; otherwise he has to go to jail; secondly, that we prosecute the application diligently and properly. It seems to me that justice would be well protected in that.

Mr. Curtin: Does Your Honor care to hear from me?

Judge Maris: Yes.

[fol. 72] Mr. Curtin: I do not want to discriminate either way—in favor of or against it, but before this is completed, I submit that this court is without jurisdiction presently to entertain a writ of supersedeas when there is no docket in the appellate court. The same thing applies in the District Court—after judgment has been denied, there must be a docket in the Circuit Court of Appeals before we can go in there. I must agree with what Judge Maris has said, that in all fairness I do not see how you could.

Mr. McBride: That has been the practice, sir, but it is undoubtedly the fact that this court has control of its

own judgment until the end of the term; you can rest your judgment.

Judge Maris: We are here entering judgment.

Mr. McBride: Yes, sir, but once you enter it—we could not take appeal till you entered the judgment——

Judge Maris: That is right.

Mr. McBride: —and having entered it, you can suspend it upon conditions which you impose, one of them being at a time to be fixed that this application must be made for [fol. 73] review. It seems to me your right to do that is clear.

Judge Maris: Of course, Mr. McBride, you can make an application, I assume,—I think the rules provide for it—to a justice of the Supreme Court. You would as soon as you have taken some step toward getting the case into that court. You do not have to await the determination of your petition for certiorari, sir.

Mr. McBride: Well, I am asking for a special supersedeas or something like that, but it seems to me, sir, that vindication of the authority of this court is the important thing here. It is not a question of whether he spends six months in jail; it is a question of the court's proper care and concern that there shall be no contempts of its authority, and certainly if we test that case and he remains out on bail, and this court grants it, this court certainly has authority to stay the enforcement of its own orders—certainly during the term of the court, could do it. As I say, if it were simply a matter between the District Court and this court where we could go in and file a typewritten petition and go on in a couple of hours—it is an entirely different [fol. 74] matter when we have to see a justice of the Supreme Court and file typewritten petitions for certiorari. As a matter of fact, we may not have the testimony for two or three days or something like that.

Judge Maris: Still it seems to me—I know of no formal rule which requires it—you have to show a substantial question in your argument. I have not yet heard anything that appeals to me as a substantial question of law.

Mr. McBride: May I briefly argue what I think it is?

Judge Maris: Yes.

Mr. McBride: Of course, it seems to be without doubt that the burden is upon the Government to prove his guilt beyond a reasonable doubt. I mean Your Honors concede that—I can assume that that is so.

Judge Maris: I would say that that is so.

Mr. McBride: This Court said so—Your Honors said in Judge Clark's case, the Eskay case, that being so the testimony that has been produced before this Court is testimony of the use of ambiguous language. Now, the Supreme Court has itself said that where ambiguous lan-
[fol. 75] guage is used, the determining factor is the intent with which it was used. Now you have both—the respondent Bradley denying that there was any intent to intimidate, and you have the witness himself saying that the meaning he took from it was not such as——

Judge Maris: Well, I am not sure that he said any such thing, Mr. McBride—and we have also before us, necessarily, because we sat in the case, the effect upon him, and it was quite obvious to the Court that he was under intimidation——

Mr. McBride: You mean Your Honor has applied the judgment——

Judge Maris: —and still is to some extent.

Mr. McBride: Well, can Your Honor say this—oh, "to some extent"—well, I respectfully submit to Your Honor that the only thing Mr. Kapelski is afraid of is this Court. I think Your Honor would gather when he was testifying, to any question Your Honor asked him he was only too willing to reply promptly; he did not take any time thinking as to what his answer would be when Your Honor asked the question. I think that any hesitation was not because
[fol. 76] he was afraid of us, but was deferring to the Court.

Judge Maris: It may be.

Mr. McBride: Now, when you take Bradley——

Judge Maris: You, of course, were not here at the hearing in the other case.

Mr. McBride: No, sir; and may I say this to Your Honor, in this proceeding here you cannot take into consideration any effect that was made upon Your Honor's mind by what you then observed.

Judge Goodrich: No, but I take it we can, because the record has been produced, see what the witness said on various occasions as we go along.

Mr. McBride: Yes, sir.

Judge Goodrich: That is in the record.

Judge Maris: I am not so sure about the other thing: it seems to be a very idealistic view——

Mr. McBride: Let me persuade you on that——

Judge Maris: —that the Court in protecting its integrity cannot take notice of what occurs in its presence.

Mr. McBride: It can take notice of what occurred in its presence—that is, if this thing had occurred in the presence [fol. 77] of the Court, the Court could without any hearing whatever decide it.

Judge Maris: What I referred to happened in the presence of the Court.

Mr. McBride: Yes, but the Court is considering what happened in its presence in connection with a matter in which it has no jurisdiction, and deciding on that matter. You are deciding this on the basis of testimony.

Judge Maris: That is right.

Mr. McBride: This is the first time that this party is a party to the proceeding before the Court, and this Court could no more take into consideration what it knew to have happened then, than what it saw on a day fifteen years ago.

Judge Goodrich: I am inclined to think you are right on that.

Judge Maris: You may well be right on that.

Judge Goodrich: But of course the record shows what he did say.

Mr. McBride: Yes, sir, and the conjectures, such as they are—the witness on the first appearance in this court stated that he would not be able to say that Garrison was unfit, [fol. 78] that he did not fire him for that purpose, and he was very reluctant, and he once said, "Well, you have got me on a spot here;" then when he came back, in answer to Your Honor's questions, he said that he had adjudged that Garrison was not a fit workman, and he told the reason why he had fired him.

Now, when you take that into consideration, Bradley had no interest in that. Whatever discrepancy existed there may have been the kind of discrepancy which existed with reference to any witness's testimony. You had a discrepancy here today when Josendale in reporting the conversation said that Kapelski told Bradley that he was going to testify against Garrison because he had fired Garrison. Now, Kapelski, in telling the whole conversation, does not put that in at all. That kind of discrepancy may occur in relation to any witness's statement.

Now, when you have a specific denial from the Government's own witness, Kapelski—he said, "Whatever Bradley said to me did not cause me to modify my testimony; did not cause me to tell any lie; and did not affect my testimony."

Now, when he says that, that is the Government's own testimony, and can Your Honors really find the contrary [fol. 79] beyond a reasonable doubt simply because of the fact that he did vary his testimony, when there were so many other possible interpretations consistent with innocence?

Judge Maris: That is a fact finding that we may say we were satisfied was right.

Mr. McBride: Does Your Honor feel there was sufficient evidence—of course, Your Honor wouldn't render judgment if you did not feel there was evidence.

The Court: We have no interest in it ourselves.

Mr. McBride: There is a substantial question as to whether that evidence is sufficient; secondly, I would like to repeat this—this man was not under subpoena of this court. Now, the statute talks about misbehavior and talks about the things for which a defendant could be indicted and tried before a jury, but the essential element of the Court's power to punish for contempt is to have a contempt of its authority. Now, the Court had no authority whatever over Kapelski; the Court's authority had not been in this case at all; the Court was not even in session when this happened.

[fol. 80] Now, consider it as being highly improper, consider it as being a threat, consider it as being intimidation—actual intimidation—still the authority of this Court was not held in contempt thereby. Even though he could be indicted, there was no power of the Court in the premises, or any authority of the Court that he had violated. If he were under subpoena as the witness in the Savin case, and he had by intimidation caused that man to violate an order of the Court to appear, then he would be clearly contemptuous of the Court's authority. I think that is an entirely different situation.

Furthermore, the question that it happened a hundred fifty or a hundred yards or so away from this court, when the only relevant decision, the Savin case, in which a man committed a contempt right in the witness room, and right

in a little hallway which was part of the premises set aside for the use of the court—this happened in a public place. Under that and under the Nye decision I think it could not be said this is a substantial violation of the Court's authority.

On the whole case, in view of the summary conviction of this man, who has these four children, certainly it cannot be [fol. 81] said that this Court would be abusing its discretion if for the purpose of permitting a man to test his legal right, the review of the summary judgment of the Court itself was conditioned upon his taking the review promptly, you permit the superseding of the service of sentence imposed by the Court.

I urge Your Honors to do it.

(The Judges confer.)

Judge Maris: Have you anything to say?

Mr. Curtin: The only think I have to say, from my point of view I do not think there is any question of any doubt at all involved in the matter.

Judge Maris: You do not need to argue that.

The Court denies the application. The Marshal will take the respondent in custody.

Court is adjourned.

(Court was adjourned at 12:56 P. M.)

[fol. 82] (The testimony of Louis Kapelski in the matter of National Labor Relations Board, Petitioner, vs. Delaware-New Jersey Ferry Company, Respondent, follows.

The testimony of September 15, 1942, appears at page 83.

The testimony of September 16, 1942, appears at page 106.)

[fol. 83] (Testimony of September 15, 1942.)

"Louis Kapelski, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wolff:

Q. Mr. Kapelski, are you connected in any way with the Delaware River Ferry Company?

A. Yes, sir.

Q. As what?

A. General manager.

Q. And you are in the court room here today under a subpoena which was served on you last night?

A. That is right.

Q. And you were here voluntarily yesterday morning?

A. Yes, sir.

Q. You drove up? Did you drive up from Chester with Mr. McAndrew?

A. I did.

Q. Of the Delaware-New Jersey Ferry Company, or with Mr. Josendale, was it?

A. That is right.

Q. And you had previously told the officers of the ferry company that would come up here and testify in connection with Herbert Garrison?

[fol. 84] A. Not necessarily.

Q. Well, you came up here as a spectator or with the intention of being a visitor—which was it?

A. I came up here at the request of Mr. Josendale, who was at my office early yesterday morning and wanted to know——

Q. You want us to understand——

Judge Maris: Let him finish. "Wanted to know" what?

The Witness: He wanted to know if I would come up and testify. I said I would be willing to, provided it did not involve us in any way, shape, or form, and that I could be away from there and back in my office by eleven a. m.

By Mr. Wolff:

Q. Now, you did come up here, then, with Mr. Josendale, with the intention of testifying in the case?

A. Under the promise that he would have me returned to the office——

Q. Now, when you arrived here, did you have a conversation in the corridor with Captain Bradley, of the union?

A. I did.

[fol. 85] Q. And your company has recognized Captain Bradley's union?

A. We have.

Q. And that is the United Marine Division, Local Number 333, I believe, is it not?

A. That is correct.

Q. Well, now, you had a conversation with Captain Bradley, didn't you, out in the corridor?

A. Passing conversation.

Q. Yes; and after you had that conversation with Captain Bradley you stated to Mr. Josendale and Mr. McAndrew what Captain Bradley had said to you, didn't you?

A. I did not state that; Mr. Josendale was standing alongside and heard it.

Q. And he heard the conversation, did he? You tell the Court just exactly what that conversation was.

Mr. Somers: I object to that. There is no foundation here. He has not procured anything directly bearing upon the case from the witness, and I do not know whether at [fol. 86] this stage the answer to the question is relevant or proper from the witness. It may be that he can get everything he wants from the witness without this. If he wants to impeach his own witness, that is another matter, but I think at this stage the matter is without foundation.

Judge Maris: I think it is perhaps appropriate to make an offer of proof.

Mr. Wolff: As I said yesterday, if Your Honor pleases, I am going to impeach the credibility of Captain Bradley as a witness, Your Honor. A great many things that Captain Bradley testified to are going to be denied, and Your Honor will be confronted with the question of veracity between opposing witnesses, and in determining that I take it you will have to take into consideration everything——

Judge Maris: Captain Bradley admitted a conversation with this witness and went into some detail. If you purpose to prove that is not what he said——

Mr. Wolff: What he said is correct as far as it went, but [fol. 87] it is a matter that is very distasteful to me and I don't want to go into it.

Judge Maris: I am just wondering. If any purpose will be served, the Court wants it.

Mr. Wolff: The purpose is simply this—this witness was intimidated and went home.

Mr. Somers: I think the witness's own statement would indicate to the contrary. In any event, wouldn't the rule on collateral pleading apply to that—that where a collateral question, that is, collateral to the main issue, is asked the witness in the case, that he is bound by what the witness has stated?

Judge Goodrich: I was thinking of that. Of course, that is true as far as collateral witnesses; however, if the suggestion is made that this witness has been intimidated, it goes further than that.

Mr. Somers: That would apply if he wants to impeach his own witness in the testimony bearing on the issues of the case. I suppose under those circumstances, contradicting your witness——

Mr. Wolff: I am contradicting your witness.

[fol. 88] Judge Goodrich: Suppose we had testimony showing that one of the witnesses for this side is endeavoring to intimidate witnesses for the other side? Would that help?

Mr. Somers: I imagine it would be relevant to account for the nonproduction of a witness whom you were relying on, or for testimony which surprises you—testimony contrary to what you expected of the witness. Under those circumstances it probably would be proper to show the situation in which the witness comes to testify in a manner contrary to what counsel had expected of him. I am sure it would not be relevant at this stage because thus far it does not appear in connection with what this witness was supposed to testify—what is the substantive isssue in connection with which he was supposed to testify? If the witness in the end does not come across with testimony exactly in the manner counsel had expected of him, then that becomes not relevant to this proceeding. This is not a conflict between the union and the company; this is a case in which the Board claims that the company has failed to [fol. 89] perform certain acts.

Judge Maris: It seems to me, just thinking about it, an application for some punishment—perhaps contempt proceedings against a person who was attempting to intimidate——

Mr. Wolff: May I say a word, if Your Honor please? I don't know what this witness is going to say. I am prepared to show what he did say to various witnesses. Whether he is going to confirm that, I do not know; but it is possible that I may plead surprise before I get through with this witness and ask leave to cross-examine him.

Judge Maris: Would it not be more appropriate to proceed with your main examination of the witness directed to the testimony in this proceeding?

Mr. Wolff: But, don't you see, Your Honor, I am employing the witness for a two-fold purpose: first of all, as to

whether or not if the statement was improper and made with an ulterior purpose; and also I am calling this witness to prove something in connection with Herbert Garrison.

[fol. 90] Mr. Somers: I assumed that is what he was there for. He can proceed with that line of proof.

Mr. Wolff: We are not before a jury.

Judge Maris: I will overrule the objection. You may proceed.

The question, in effect, was, What did Captain Bradley say to you yesterday morning in the corridor?

Mr. Wolff: Let me rephrase it.

By Mr. Wolff:

Q. When you saw Captain Bradley out here, did you tell him why you were here?

Mr. Somers: I object to the question—and if he desires to go into the whole conversation he may as well ask him the entire conversation.

By Mr. Wolff:

Q. I will put the question this way: State the entire conversation that took place between you and Captain Bradley.

A. Your Honor, I don't know—it appears as if I am being put on the spot here for some unknown reason.

[fol. 91] Judge Maris: No, I don't think so. I think that you are under full protection of the Court.

The Witness: I met Captain Bradley in the corridor, and naturally I said, "Good morning, Captain Bradley; what are you doing here?"

He answered with the same question—he says, "What are you doing here?"

I said, "I came up here at the request of Mr. Josendale for Herbert Garrison he employed then."

"Well," he says, "you are on the other side, then; you are staying with them."

I said, "Well, I don't know what you mean."

He says, "Well, I am here for the same thing." He says, "That is the case I have been fighting." He says, "Nevertheless, if you are on their"—he says, "you are going to get"— in other words, "you are on the wrong side of the fence, or you are going to get a trimming from the

side of the fence you are on." That is the way the thing implied to me. There was no threat as far as our contract [fol. 92] with the union was concerned, but the threat, "If you stay with that side, you are on the wrong side of the fence." That is the way I took it.

And naturally, being brought up here and stated that I would be delivered back to my office at a certain time, I hung around here, and it was one-thirty before the car arrived here for me to leave here to go back to my office. I was to be back at eleven o'clock.

By Mr. Wolff:

Q. What time did you leave the corridor out here?

A. What time did I leave the corridor? I was there in the corridor until eleven-thirty. I sat on the bench in the midway there reading the Philadelphia Record.

Q. And you were not in the court room either?

A. I was not in the court room; I stayed in the corridor by myself reading the Record.

Q. Did you say anything to Captain Garrison this morning when he arrived here?

A. Did I say anything to him?

Q. Yes; did you have any conversation with Captain [fol. 93] Garrison when he arrived in the court room this morning?

A. Yes, I had a conversation with him.

Q. What did you say to Captain Garrison this morning?

Mr. Somers: I object to that as entirely irrelevant and improper.

Judge Maris: What is the purpose of that?

Mr. Wolff: All linked up with what he has just said, if Your Honor please, for the purpose of proving exactly why he left yesterday.

Mr. Somers: I would still think it immaterial. The witness is here.

Judge Maris: Objection sustained. Proceed.

By Mr. Wolff:

Q. Now, what did you say to Captain Garrison?

Judge Maris: I sustained the objection.

Mr. Wolff: Oh, I beg your pardon.

By Mr. Wolff:

Q. Well, now, Mr. Kapelski, did you have Herbert Garrison in your employ in the summer of 1940?

A. We did.

[fol. 94] Q. And he was employed on one of the ferry boats which your company operates?

A. That is right.

Q. And your company operates ferry boats between what points?

A. Chester, Pennsylvania, and Bridgeport, New Jersey.

Q. And did you discharge him some time in October, 1940?

A. I——

Mr. Somers: I object to that. It is a leading question. He can ask the witness whether Garrison continued in his employ.

Judge Maris: I will permit that question. That is too fine. Proceed.

By Mr. Wolf:

Q. Did you discharge him some time in October of 1940?

—. I could not swear to that because I do not know the date. The dates were given to your man when your man called at the office and requested them.

Q. Yes.

[fol. 95] A. I do not have the dates with me and I would not state that.

Q. Is this the card which you gave to someone in the Delaware-New Jersey Ferry Company? No, it is over here. (Turns card over.)

A. Probably the material on this side is, but the material on this side is not.

Q. That is correct. I am showing you that side of the object—is that the card which you gave to him?

A. This is the card the young lady in the office gave to him. It is in her handwriting.

Q. Does that refresh your memory as to when Herbert Garrison was discharged, if he was discharged?

A. It does not refresh my memory. It refreshes this to me, that on October 29th was the end of that week's pay which ended his term that he worked for us as probably an extra man.

Q. October 29, 1940?

A. That is right.

Q. That was the date on which his employment termi-
[fol. 96] nated?

A. That is right.

Q. Now, was he discharged?

A. He probably was discharged for the simple reason that he was an extra man.

Q. And why was he discharged?

A. He was discharged because at the time for the period in October, in the ferry business all crews are reduced, and you *main*tain at that time your best men.

Q. Now, are you telling the Court under oath here that that is the statement you made to various men in the Delaware-New Jersey Ferry Company with whom you have discussed this matter, and is that statement under oath now the statement which you made to me in the corridor yesterday morning? Answer that question yes or no.

A. In my opinion——

Q. It is not a question of opinion: it is a question of fact. Are you now telling the Court under oath what you told me in the corridor yesterday morning before you spoke to
[fol. 97] Captain Bradley, and what you said to Captain Garrison and Mr. Josendale and Captain McAndrew?

A. I don't recall what I said to you.

Mr. Wolff: All right. If Your Honor please, I will ask that this witness be detained in court till I can put testimony on to prove what he did say, and I will leave Your Honor to deal with him as you see fit.

Judge Maris: Is that all the questions you have to ask him?

Mr. Wolff: All I want to ask him now. I am going to put in evidence——

Mr. Somers: May I have the card?

Mr. Wolff: Surely.

I want to say in reference to this card something typed on the back of it——

Mr. Somers: May I question the witness?

Judge Maris: Cross-examine.

(Addressing Mr. Wolff): You take your seat.

Mr. Somers: May I have that marked for identification, please, our exhibit 16?

(A card was marked Board's Exhibit No. 16.)

[fol. 98] Cross-examination.

By Mr. Somers:

Q. Mr. Kapelski, I show you what has been marked Board's Exhibit 16 for identification, and ask you whether that is the card that Mr. Wolff just showed you in connection with the inquiry as to when Herbert Garrison's employment terminated with you. Let me ask you if that is the card.

A. That is the card.

Q. Now, whose card is that?

A. That is a card which was given to Mr. Josendale in our office when he called there requesting the period of time that Herbert Garrison was in our employ.

Q. Was that a card belonging to the Delaware River Ferry Company—your company?

A. That is right. That is a copy of our card in our files.

Q. I say, it is one of your form cards; is that right?

A. That is correct.

Q. Now, when did Mr. Josendale call at your office?

[fol. 99] A. I don't recall the date or time.

Q. I mean to say, did he call this year or the year before, or the year before that?

A. This year.

Q. Can you tell us your best recollection as to how long ago he called on you?

A. I couldn't state the exact time because I do not know. It is probably six weeks ago—it may have been four weeks ago; it may have been three weeks ago.

Q. I see. But between three and six weeks ago he called at your office. Had you ever seen Mr. Josendale before?

A. No, sir.

Q. Is that the first time anybody from the Delaware-New Jersey Ferry Company came to you to speak to you about Herbert Garrison?

A. That is right.

Q. And you would be the person who would normally be spoken to in connection with the employment record of any employee?

A. That is right.

Q. How long have you been in your present position with [fol. 100] the Delaware River Ferry Company, Mr. Kapelski?

A. Twelve years.

Q. Twelve years?

A. That is right, twelve years.

Q. Now I show you the back of that card—the side of the card that Mr. Wolff did not show you——

Mr. Wolff: If Your Honor please, I was going to explain to counsel——

Mr. Somers: Just a moment, sir; I am questioning here.

Mr. Wolff: —what appears on the back of this card.

Mr. Somers: I object to that. I object to any comment or interpolation.

Judge Maris (addressing Mr. Wolff): Do you wish to be sworn?

Mr. Wolff: No, I don't, if Your Honor please.

Judge Maris: How can you say what is on the card?

[fol. 101] Mr. Wolff: I object to the innuendoes.

Mr. Somers: I am identifying the side that was not shown to the witness, sir.

Judge Maris: All right, gentlemen.

Mr. Somers: I am sorry. I apologize to the Court for raising my voice, but this is a controversial matter and counsel's remark was improper.

Judge Maris: You may proceed with your examination in order.

Mr. Somers: I merely want the acknowledgement of the Court that I apologize to the Court for my raised voice.

Judge Maris: Your apologies are accepted.

By Mr. Somers:

Q. Now I show you the reverse side and ask you just how did the data appearing on the reverse side come to be placed on that card.

Judge Maris: If you know.

By Mr. Somers:

Q. If you know.

A. I do not know.

Q. Was that put there in your presence?

A. No, sir; it was not put there in my presence, and it [fol. 102] was not put there in my office.

Q. I see. In other words, the only side of the card, Labor Board's Exhibit 16 for identification, which was filled out

is the part bearing the name of Herbert Garrison, and having the various weekly dates—that is, for weeks ending certain periods, 8/6, 8/13, 8/20, 10/22, 10/29—an oblique line between each two numbers—and indicating how much you paid for each week.

A. How much he was paid and his Social Security number.

Q. Did you turn over this card with the entries on this matter to Mr. Josendale?

A. That is right.

Q. How was the other side—the reverse side of the card—when you gave it to Mr. Josendale?

A. It was blank, because we just gave him the information which he requested, which was on that one side of the card—the time which the man worked for us, the period of time he worked for us, and the amount of wages he was paid, and if he was discharged, and we told him he was.

Q. When, for the first time, Mr. Kapelski, did you see [fol. 103] this notation on the reverse side of Board's Exhibit 16 for identification?

A. Well, I just seen it now; I had no reason to see it before.

Q. I see. When it left your hands it was completely blank?

A. That is correct.

Mr. Somers: I ask to have that marked in evidence, please, as Board's Exhibit 16. Does the Court want to see it?

Judge Maris: No, I don't want to see it. I don't believe this is a proper time for you to offer exhibits, now; I think it is the respondent's case.

Mr. Somers: Oh, this is cross-examination.

Judge Maris: You can have it marked, of course, and perhaps in rebuttal you can offer it, or at the proper time you can offer it.

Mr. Somers: I just want to get that clear.

Judge Goodrich: What are you offering it for? To show the wages this man received?

Mr. Somers: No; it appears there is a notation on the [fol. 104] reverse side of the card "Discharged 10/29/40. Unfit for any position with the company." That note was not made by this witness or by anyone in connection with the Delaware River Ferry Company.

Judge Maris: What does that prove?

Mr. Somers: And it was made after it was turned over to Mr. Josendale.

Judge Maris: Suppose it was; what does that prove?

Mr. Somers: Here was a card given by the Delaware River Ferry Company to this respondent here.

Judge Maris: Suppose you picked up a blank piece of paper on the street and it has on the bottom of it, written, that A. Norman Somers is a constant liar? Does that prove anything? I don't think so.

Mr. Somers: No, I would say that if something was put upon the card, let us say——

Judge Maris: If you could prove who put it there it might corroborate something or prove something, but you hadn't done that yet.

[fol. 105] Mr. Somers: Well, I would think the inference was that it was put there by this respondent on a card purporting to be the card of the Delaware River Ferry Company.

Judge Maris: That is highly immaterial.

Mr. Somers: I will withdraw the offer then, if the Court feels that way about it.

Judge Maris: It may become material later, but at this stage it is not.

Mr. Somers: That is all with this witness, then.

The Witness: Must I remain here?

Judge Maris: Do you want this witness held?

Mr. Wolff: I would like him held, yes, if Your Honor please. I am going to call a number of witnesses.

Judge Maris: Oh, he is available, I think. If he is needed, he may be recalled. You may go.

Mr. Wolff: All right.

The Witness: Thank you.

Judge Maris: Do you have a short witness?

Mr. Wolff: No, I don't think so, Your Honor.

[fol. 106] (Testimony of September 16, 1942.)

Louis Kapelski, recalled.

Direct examination:

The Witness: Your Honor, I think you clearly understand the full set-up.

Judge Maris: You were asked to tell the truth yesterday, and we do not think you did.

The Witness: I told the truth as far as I was concerned when they asked the question why I discharged the man.

Judge Maris: Suppose you sit down and we will ask you a few questions.

By Judge Maris:

Q. Perhaps you did not understand the questions. We felt, however, that your answers were so evasive as to amount to contempt. You were asked as to whether you had employed Garrison.

A. That is right.

Q. And you testified, as I recall, that you had employed him during the strike at Newcastle, and you had let him go some time, I think, in late October, and you were asked, as I recall it, what the reason was for your letting him go. Now, I think you testified that there was no more work for him, did you not?

[fol. 107] A. I testified, if I recall, Your Honor, that in the ferry business approximately October 29 is after all slow and you discharge men, and if I recall this fellow's record, he did not work steady at any time there. He made one full week during his period of time there.

Q. Was his work satisfactory?

A. Was his work satisfactory?

Q. Yes.

A. I think I stated yesterday that he wasn't a satisfactory worker.

Q. What was the trouble with his work? In what way was he not satisfactory?

A. In our opinion, as far as we are concerned, everybody in their own business has a different opinion as to how they class a worker. Naturally we pass ours on our own men, and the probability is we observe the man through his appearance and so forth.

Q. You know what we mean. Was he satisfactory to you? Was he a satisfactory man for you to employ permanently if you had work for him?

A. If I were to employ him permanently? I would not employ him permanently.

[fol. 108] Q. I asked if he was so satisfactory in his work that you would have employed him. You know what I mean.

A. I would not permanently, no.

Q. Tell us why.

A. Well, as I stated, his appearance for one thing. His appearance was not what it should be for a workman at that type of work, and for the amount of compensation he was receiving for doing it.

Q. And what work was he doing?

A. Deck hand on a vessel, and at that time there I think his wages were approximately $37.44 a week, something like that, for a 48-hour week, and as deck hand naturally you are in one sense nursemaid to a boat, and you direct the public onto the boat, see that they are properly parked and checked, and work under the captain's direction at all times. From my observation there at times, well, I would say no.

Q. You had some conversations with Mr. Josendale and Mr. McAndrew, did you not, before you came to court? You said that you did.

A. I said yesterday that I did.

[fol. 109] Q. Did you not tell them that this man's work was unsatisfactory, and that you would not employ him again?

A. That is right.

Q. Or words to that effect?

A. That is right; words to that effect, except I just stated right here, for a steady man we will not employ him steady now, but I think, if you recall his record, he worked off and on there one day and two days, and that is about all we were in need of a man through the period. I do not recall the dates on the card.

Q. Did you state then that he caused you more damage than he was worth?

A. I did not.

Q. You did not?

A. I did not.

Q. Did he cause any damage to the operation of your boats?

A. He could not cause any damage in his capacity.

Q. He was a deck hand?

A. He was a deck hand.

By Judge Goodrich:

Q. You said he did not cause any damage in his capacity. Do you mean as a deck hand, or did he cause any other [fol. 110] damage?

A. No, and it is impossible for him to cause any damage otherwise also, because he has no charge, and he doesn't handle the boat.

By Judge Maris:

Q. He does not, I suppose, direct traffic in and out?

A. He does direct traffic on and off a boat; that is for unloading; and in order to check back I would have to check back the record to see if there was any accident at the time he was directing traffic off and on.

By Judge Goodrich:

Q. You don't remember any now?

A. I do not, sir.

Judge Maris: Are there any questions that either counsel desire to ask?

Mr. Somers: I would like to ask him one question.

Cross-examination.

By Mr. Somers:

Q. As I understand it, the two matters which weighed most heavily with you, or weighed with you at all in judging Herbert Garrison's fitness one is appearance, you did [fol. 111] not like his appearance, and, secondly, he did not appear steadily on the job.

A. That is right.

Q. Did you know that the union to which Garrison belonged was then on strike with the Delaware-New Jersey Ferry Company, and that Garrison was one of the strikers? Did you know that at the time?

A. I knew that, yes, sir.

Q. And did you know that part of the time was taken up doing picket duty in connection with that strike?

A. I wouldn't say that, because—may I answer that in this manner?

Q. Yes.

A. As I recall, they were short men.

Q. I see.

A. We needed men at the time, and under your union agreement, or contract, you must first call upon the union to supply a man to fill that vacancy for the one day, two days, or week, or whatever you may have.

Q. I see.

A. And this was the man that was sent in by the union.

[fol. 112] Q. Then, when you hired him at all, it was only for the brief one or two-day fill-in period?

A. That is correct.

Q. So that his absence during the rest of the period was not absence from duty, it was just absence of work that your company had during the remainder of the period?

A. That is correct. As we need a man, the vacancy occurs there through some men going out for a period.

Q. I see.

A. We may call the union, according to our agreement, or the shop steward, and request a man to fill our vacancy, which we had, and this was the man that was supplied to fill the vacancy.

Q. And other strikers were put on there on the same basis as Mr. Herbert Garrison would fill in occasionally, when you were short-handed?

A. That is right.

Judge Maris: During that period?

Mr. Somers: During that period of July, 1940, and October or November, 1940.

The Witness: That is right.

By Mr. Somers:

[fol. 113] Q. You say that the rate that you paid deck hands was $38 a week?

A. For 48 hours. If I am not mistaken it came to $37.44.

Q. You said something, Mr. Kapelski, about the fact that each company had its own standards, and that you had your own standards of suitable workmen for your company. Now, I call your attention to the fact that the wage rate of a deck hand in the period that Mr. Garrison was working for you and which you were paying then was $38 a week, and at the same time the Delaware-New Jersey Company was paying to deck hands $24 a week. Did you consider your standard of fitness of a crew as higher than that of the Delaware-New Jersey?

A. In one sense. I don't know. It is sort of an unfair question to ask.

Mr. Somers: Yes. I withdraw that.

By Mr. Somers:

Q. I will state this, Mr. Kapelski. Did you have an opportunity

Judge Maris: Do you mean by that that they would take men that slept on duty, whereas perhaps another ferry company would not? Are you getting at that kind of proposition?

[fol. 114] Mr. Somers: No, I am not.

Mr. Kapelski based his bad reaction to Garrison here on his disappearance. He felt that that was a sufficient factor.

By Judge Maris:

Q. You did not base your judgment on his appearance alone, did you?

A. No; on his method of directing and taking care of traffic as they drove off and on the vessel. Those are the things that you observe in a workman; in other words, you like a workman to be on his toes and have a neat appearance, and do a job without anyone having to say anything to him, and always be there, and do as he had to do to avoid accidents. After all, the safety of the public is important at all times.

Judge Maris: Where is that card that has his record? Is it here?

By Judge Maris:

Q. Mr. Kapelski, yesterday after you left, after you testified, and so on, Mr. Josendale testified that he got this card, which I think you identified as having been given to him, a copy of your record made up by your company.

A. Yes.

[fol. 115] Q. He said that while he was there you gave him this card and told him in effect that your considered Herbert Garrison unfit for any position in your company, and that you would not reemploy him, and after he went back in order to assist him in his memory of the thing, he wrote those words, "unfit for any position in the company", on the back of the card. Is that substantially what you told him?

A. That is correct. It is only my opinion, Your Honor.

Q. I understand that. You operate your company according to your opinion. That is all we are asking you for.

A. That is right.

Q. That is substantially what you said?

A. That is right.

Q. Very well.

By Mr. Somers:

Q. In arriving at your opinion, Mr. Kapelski, did you receive a general impression from his appearance and demeanor, or were there any specific instances of negligence or dereliction on Garrison's part which brought you to a [fol. 116] certain conclusion?

A. Well, when a man is working on a vessel; in other words, you judge a man through observation on him, his actions and the things he does, and so on and so forth. Maybe I didn't see enough of the man, but what I did see of him—I mean, this probably wasn't one thing.

Q. Then you said that your conclusion as to Garrison's fitness is based upon your general observation, and I am asking you whether it had any reference to any specific incident, some specific dereliction on his part. Specifically, I would ask you this: did you ever find him drunk on the job?

A. That I could not answer. I couldn't answer that.

Q. When you say you couldn't answer, you mean you cannot answer yes, or you cannot answer no?

A. I cannot answer yes, or I cannot answer no. I do not know from his habits. I didn't follow them closely. All I observed was to follow him from time to time on the boat as he loaded the boat during their runs.

Q. I am not asking you, do you know of his being drunk [fol. 117] or not. I am asking, had you ever seen him drunk on the job, from your observation?

A. To my knowledge, no. I mean, I couldn't; I could say that I didn't.

By Judge Maris:

Q. You do not know? Did you observe that?

A. No.

By Mr. Somers:

Q. Has any report been made to you? I will put it this way: In the course of your duties, if a man was drunk on the ship, would such a report be made to you?

A. That is right, but oftentimes there are things that just happen which never are reported until you catch up with them.

Q. Making that allowance, I am asking you, did you ever receive a report that Garrison was drunk? Was any report made to you that he was drunk?

A. No.

Q. Now, I will ask you whether any report ever came to you that Garrison was asleep on the job?

A. To my knowledge, no.

Q. I will ask you whether you saw, or any report came to you, as to Garrison's having committed some act of [fol. 118] negligence on the job?

Judge Maris: Do you mean, whether he was careless?

Mr. Somers: Some negligence, or any specific act of negligence or dereliction of any kind which bears upon his fitness for his job.

Judge Maris: Perhaps you should put it this way: Did you observe that he was careless in the performance of his duties?

By Mr. Somers:

Q. That is really your complaint, is it not?

A. That is my whole complaint.

Q. What was the nature of the carelessness that you observed?

A. As I stated to the question, in the method in which he handled the public in their cars, in the loading of the vessel. After all, when your boats load and you are carrying your actual capacity loads, you must be careful at all times in the loading of them so that they are properly loaded, and so forth.

Q. Then, your conclusion as to Garrison is based upon his general manner of working, and has no reference to any specific acts or dereliction on his part, such as negli- [fol. 119] gence, such as being off duty, asleep on duty, drunkness, or anything of that kind?

A. Well, I couldn't testify to that, because I have no record of the man doing anything of that nature.

Q. During the summer of 1940, you had other men; that is, other employees of the Delaware-New Jersey Ferry Company, working for you from time to time; is that correct?

A. That is right.

Q. Did you have an opportunity to make a comparison between the employees of the Delaware-New Jersey Ferry Company and those of your company, your steady employees?

The Witness: Will you ask that question again?

By Mr. Somers:

Q. I say, did you have an opportunity to make a comparison, and did you make a comparison, between the employees whom you employed steadily and those who worked for the Delaware-New Jersey Ferry Company?

A. Well, that question, you are coming right back to the [fol. 120] question which you asked some time ago; in other words, whether or not we employed a higher type of men than they do. It kind of puts me on the spot.

Q. I will ask you this: whether you have an opinion—how long have you been in this business, sir?

A. Twelve years.

Q. And you feel capable of judging the relative fitness——

Judge Maris: Now, what possible bearing has that inquiry?

Mr. Somers: I think it has a definite bearing.

Judge Maris: You mean that the group of men that live about New Castle and Pennsville are in a lower level than those around Chester?

Mr. Somers: No, I do not. The company says that Herbert Garrison, who had been a mate for two or three years, and who had been in its employ since 1927, and who up to that time was satisfactory, up to the time of the strike or when it was over was not satisfactory for his purposes to resume his position, his duties as a mate, and the reason [fol. 121] for it is that the Delaware River Ferry Company deemed him unfit for a position. I deem it becomes pertinent here.

Judge Maris: I did not understand that was a reason. I do not see the pertinency.

Judge Goodrich: I do not understand that to be the reason. I do not see why it should evolve into a dispute about the relative merits of the two companies.

Mr. Somers: I will not press it if you deem it is not pertinent.

Judge Maris: You have pressed it a good deal.

Mr. Somers: May I, with Your Honor's indulgence, just read the answer? I will be brief, but with respect to Garrison they said, and I am reading from page 3 of the respondent's answer:

"The respondents further allege and aver that after going on strike in July, 1940, the said Herbert Garrison obtained employment on one of the ferry boats which were then being operated by the Delaware River Ferry Company; that on or about October 29, 1940, he was discharged by said Delaware River Ferry Company as unfit for any position in said company; and that, being mindful of their [fol. 122] responsibility for the safety of the passengers and property carried by them on their ferry boats, and being of the opinion that the said Herbert Garrison was no longer competent and fit to perform any of the duties required of him in his former position, the respondents refused, solely for that reason, to reassign him to his former position as a wheelsman and deck hand, but did assign him, on November 23, 1940, to shore duty as a bridge man."

Now, I have read that one sentence.

Judge Maris: That is true; they made that averment. I do not see how you are going to disprove that by the cross-examination of this witness. You are endeavoring to obtain a rebuttal of that answer in some form by getting him to admit in some way that the standards are different. He has testified to one thing, what his opinion was, what his view was. Now you may cross-examine him as to that, and you have at length, but you are getting afield and you are bringing in matters that were not included in the examination, that are in the nature of your rebuttal.

Mr. Somers: I certainly would not want to press anything that is immaterial. This thing stands out in my mind. [fol. 123] It appears to me, unless I am misreading the answer, that they base their opinion that he was no longer fit to operate or to resume his duties as a mate, upon the fact that the Delaware River Ferry Company discharged him because they did not deem him fit for a position, and the words are taken from their answer.

Judge Maris: Mr. Kapelski deemed him unfit. They evidently did not deem him unfit, because they evidently put him back on a job; that is, this respondent.

Mr. Somers: This respondent put him back on the job as bridge man.

Judge Maris: They evidently did not follow the statement of Mr. Kapelski. They put him back.

Mr. Somers: They said that they found him no longer fit to perform any of the duties of his former position. It may be that the Delaware River Ferry Company did not take that position, that they felt that he was not fit for any job, but it does expressly state here that the reason why they deemed him no longer fit to go back as a mate was that the Delaware River Ferry Company no longer deemed him fit to perform any job.

[fol. 124] Judge Maris: We have discussed it long enough.

Mr. Somers: If Your Honors rule on the question.

Judge Maris: I so rule.

Mr. Somers: No more with this witness.

Judge Maris: Mr. Kapelski, the Court thinks that you have fully purged yourself. There may have been intimidation in this case. That is a matter we are going to go into later, but we feel that you have fully purged yourself, and you are excused. You may go.

The Witness: I may leave for the day?

Judge Maris: You may leave for the day.

The Witness: Thank you.

Judge Maris: Is the United States Attorney here, represented by Mr. Rettew?

Mr. Rettew: Yes, sir."

[fol. 125] In United States Circuit Court of Appeals for the Third Circuit, October Term, 1941

No. 8140

In Re William V. Bradley

Before Maris and Goodrich, Circuit Judges

Order and Judgment—Filed September 28, 1942

And Now, September 28, 1942 after full hearing and consideration of the testimony presented in open court upon the return of the rule to show cause heretofore entered herein the court now finds that

On September 14, 1942 at about 10.15 o'clock A. M. and about fifteen minutes before the scheduled commencement of the hearing by this court of a certain proceeding pending in this court entitled National Labor Relations Board v. Delaware-New Jersey Ferry Company, No. 7850, in the corridor of the United States Courthouse outside of and adjoining the court room of this court in Philadelphia, the respondent above named, William V. Bradley, did utter words which were calculated to and intended to intimidate one Louis Kapelski, a prospective witness then and there voluntarily attending the opening of this court for the purpose of giving testimony in the above mentioned cause on behalf of the respondent therein.

[fol. 126] The court further finds that the words so uttered by the respondent Bradley did intimidate the said Louis Kapelski to the effect that he gave before this court false, perjured and incomplete testimony upon the hearing of the said cause.

From the foregoing facts it is adjudged by the court that the respondent William V. Bradley did thereby commit a contempt of this court for which contempt it is by the court now ordered and adjudged that the said William V. Bradley be imprisoned for the period of six months and pay a fine of $500.00 and stand committed until the sentence is complied with.

It is further ordered that the United States Marshal for the Eastern District of Pennsylvania shall forthwith execute this judgment.

By the Court: Albert B. Maris, Circuit Judge.

[File endorsement omitted.]

[fol. 127] In United States Circuit Court of Appeals for the Third Circuit

[Title omitted]

Before Maris and Goodrich, Circuit Judges

Order Amending Judgment—Filed October 1, 1942

And Now, October 1, 1942, It Is Ordered that so much of the order and judgment entered by this court herein on September 28, 1942, as reads as follows:

"From the foregoing facts it is adjudged by the court that the respondent William V. Bradley did thereby commit a contempt of this court for which contempt it is by the court now ordered and adjudged that the said William V. Bradley be imprisoned for the period of six months and pay a fine of $500.00 and stand committed until the sentence is complied with."

be and the same hereby is amended so as to read as follows:

From the foregoing facts it is adjudged by the court that the respondent William V. Bradley did thereby commit a contempt of this court for which contempt it is by the court now ordered and adjudged that the said William V. Bradley be imprisoned for the period of six months.

By the Court: Albert B. Maris, Circuit Judge.

[File endorsement omitted.]

[fol. 128] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 129] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. 473

ORDER ALLOWING CERTIORARI—Filed October 26, 1942.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.